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ILO CONVENTION NO. 144

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Mr. Pell, from the Committee on Foreign Relations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany Treaty Doc. 99-20]

The Committee on Foreign Relations, to which was referred a Certified Copy of the Convention (No. 144) Concerning Tripartite Consultations To Promote the Implementation of International Labor Standards, adopted by the International Labor Conference at Geneva on June 21, 1976, having considered the same, reports favorably thereon with a declaration and recommends that the Senate give its advice and consent to ratification thereof.

Purpose

The purpose of this Convention and Recommendation No. 152 is to provide a procedural standard relating to the administrative machinery for participating in the International Labor Organization (ILO). It does not change U.S. domestic labor law. It simply provides that ILO members which ratify the Convention must establish and maintain machinery to ensure effective tripartite consultations between governments, employers, and workers on matters relating to the ILO.

Background

The essential characteristic of the ILO is the fact that it is composed not only of government representatives but also of representatives of employers' and workers' organizations. Article 3 of the ILO Constitution provides that the meetings of the General Conference (held once a year) shall be composed of four representatives of

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each of the members, of whom two shall be government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the members.

Article 7 of the ILO Constitution provides that the Governing Body of the ILO shall consist of 56 persons, 28 representing governments, 14 representing the employers, and 14 representing the workers. Thus, employers' and workers' representatives make up half the membership of both the General Conference and the Governing Body.

Beyond the General Conference and the Governing Body, meetings in the ILO take many other forms: Special conferences on particular issues, committees, groups of experts or specialists, and ad hoc meetings. With rare exceptions, all these meetings are tripartite, so that all decisions reached in them represent the views of employers and workers as well as those of governments. Thus, tripartitism is the very essence of the ILO.

In 1977, the U.S. Government withdrew from the ILO. The reasons for our withdrawal were stated by Secretary Shultz in 1985:

> We believed that the principle of tripartitism, that is, the right of employer and worker groups to participate autonomously in the Organization and on national delegations, was being eroded.
>
> We also believed that the Organization was exercising a double standard in citing countries found to be in violation of ratified conventions. Up to the time of our withdrawal, the ILO Conference on only one occasion had censured a communist country for violating one of the critical ILO human rights conventions dealing with freedom of association, forced labor or discrimination. However, the Conference regularly criticized others, particularly Latin American countries.
>
> Third, we were dissatisfied with the Organization's growing disregard of its own principles of due process; its disregard of the ILO's longstanding procedures for impartially investigating complaints against members alleged to have violated their obligations under conventions. This was particularly true in the case of Israel.
>
> Finally, we believed that too many members were using the ILO simply as a political forum to pursue issues irrelevant to the ILO's mission and that properly belonged in the Security Council or the U.S. General Assembly. These political activities were disrupting ILO proceedings and detracting from legitimate technical work.

In 1980, the United States rejoined the ILO because of improvements in these areas of concern. According to the Department of State, there continues to be advancement in the ILO. The following list of examples was provided by the Secretary of State in 1985:

> In 1980, the Conference censured Czechoslovakia for discriminating against workers on the basis of their political beliefs and, over Soviet objections, strengthened mechanisms for supervising the implementation of conventions.

> In 1981, the Soviet Union was cited for failure to bring it law and practice into conformity with the ILO's convention on freedom of association, and in December of that year, with the suppression of the trade union Solidarity, the ILO began what was to become a long and entirely proper effort to ameliorate the tragic conditions in Poland.
>
> In 1982, the ILO Conference did not act on a politically motivated anti-Israeli resolution. However, its prestigious Committee on the Application of Conventions and Recommendations censured the Polish Government, as had the governing body's Committee on Freedom of Association, in a series of overwhelming votes in the spring and fall.
>
> In 1983, the Organization turned a deaf ear to Soviet calls to reform and democratize—in reality, to politicize and thus to weaken—ILO supervisory machinery, that is, the procedures by which the Organization supervises the implementation of conventions. It established a Commission of Inquiry on Poland, and by secret votes, adopted a well-balanced human rights report that, over strenuous Soviet opposition, included criticism of Czechoslovakia.
>
> This encouraging trend continued in 1984. The Conference decisively rejected a concerted Soviet effort to undermine the supervisory machinery. The Committee on Inquiry on Poland turned in a strong report justifiably critical of the Polish Government, and the report was approved by the governing body over strong Soviet resistance.
>
> The Conference adopted another balanced human rights report, and it affirmed Israel's right to participate in ILO regional activities.
>
> Finally, in 1985, the Organization once more rejected Soviet so-called reforms. It turned back a Nicaraguan effort to manipulate the Non-Aligned Group and to politicize the annual conference through the introduction of a resolution against the United States trade embargo.

It is the belief of the U.S. Government that when one looks at all the U.S. organizations, the ILO stands out as one advancing U.S. political interests. According to the testimony of Anthony G. Freeman, Special Assistant to the Secretary of State, before the Committee on Foreign Relations on October 1, 1987:

> The U.S. interest in the ILO includes the advantages membership provides for American labor and for American employees as well as for the U.S. Government. Participation offers an opportunity to pursue overall U.S. foreign policy interests in several ways. It permits us to advocate the American economic, social, and political system, and to stress the advantages of a pluralistic society as compared to communist and other totalitarian systems. It serves as a channel to help less developed countries to advance in social and economic directions compatible with U.S. security and ideals. It serves as a multilateral technical assistance agency, with an American presence, in the field of human resources development. It is a platform to promote free labor movements in pluralistic societies. It also pro-

> vides information about new foreign labor and manpower policies and programs of potential use in the United States.
>
> In addition, the ILO plays a major role in promoting worker's rights. Issues such as freedom of association, the right to bargain collectively, forced labor, child labor, and discrimination in employment are workers' rights which have been of concern to the ILO for many years. ILO efforts to undertake impartial investigations of human rights violations in Eastern Europe have opened a new chapter in the ILO's human rights program—one which the United States promotes actively.

It should be emphasized that the improvements and achievements of the ILO were accomplished by the close tripartite cooperation of the U.S. Government, employers and workers.

MAJOR PROVISIONS

On April 10, 1986, the President transmitted to the Senate a certified copy of the Convention (No. 144) Concerning Tripartite Consultations To Promote the Implementation of International Labor Standards. The President also transmitted for Senate information a copy of the recommendation (No. 152) on the same subject, adopted by the International Labor Conference, which amplifies some of the Convention's provisions.

The following is an analysis of the major provisions of the Convention and Recommendation No. 152 prepared by the Department of Labor. This analysis emphasizes that the Convention elaborates certain principles already established in the ILO Constitution and in the workings of the ILO system.

> Article 1 of the Convention provides that the term "representative organizations" means the most representative organizations of employers and workers enjoying the right of freedom of association.
>
> Under Article 2, each member of the ILO which ratifies the Convention undertakes to operate procedures which ensure effective consultations concerning the activities of the ILO set our in Article 5, paragraph 1, between representatives of the government, of employers and of workers. The nature and form of these procedures shall be determined in each country in accordance with national practice.
>
> Article 3 provides that the representatives of employers and workers, for the purposes of the procedures provided for in the Convention, shall be freely chosen by their representative organizations, where such organizations exist. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken.
>
> Article 4 provides that the competent authority shall assume responsibility for the administrative support of the procedures provided for in the Convention Appropriate arrangements shall be made between the competent author-

ity and the representative organizations for the financing of any necessary training participants.

Article 5 states that the purpose of the procedures provided for in the Convention shall be consultations on the following: (1) government replies to questionnaires concerning items on the agenda of the International Labor Conference and government comments on proposed texts to be discussed by the Conference; (2) the proposals to be made to the competent authority or authorities in connection with the submission of conventions and recommendations pursuant to Article 19 of the Constitution of the ILO; (3) the re-examination at appropriate intervals of unratified conventions and of recommendations to which effect has not yet been given, to consider what measures might be taken; (4) questions arising out of reports to be made to the International Labor Office under Article 22 of the Constitution of the ILO; and (5) proposals for the denunciation of ratified conventions. Such consultations shall be undertaken at appropriate intervals to be fixed by agreement, but at least once a year.

Article 6, the final substantive article of the Convention, provides that the competent authority shall issue an annual report on the working of the procedures provided for in the Convention when this is considered appropriate, after consultation with the representative organizations.

Recommendation 152 sets forth certain suggestions for carrying out the consultative procedures provided for in the Convention. For example, such consultations may be undertaken (a) through a committee specifically constituted for questions concerning the activities of the ILO; (b) through a body with general competence in the economic, social or labor field; (c) through a number of bodies with special responsibility for particular subject areas; (d) through written communications.

The Recommendation also provides that measures should be taken, in accordance with the employers' and workers' organizations concerned, to make available appropriate training to enable participants in the procedures to perform their functions effectively.

In addition to the consultations provided by the Convention, the Recommendation proposes consultations on the preparation and implementation of legislative or other measures to give effect to international labor conventions and recommendations, in particular to ratified conventions.

The Recommendation further suggests consultations on other matters of mutual concern such as the preparation, implementation and evaluation of technical cooperation activities in which the ILO participates; the action to be taken in respect to resolutions and other conclusions addopted by the International Labor Conference, regional conferences, industrial committees and other meetings convened by the ILO; and the promotion of a better knowledge of the activities of the ILO as an element for use in economic and social policies programs.

CURRENT U.S. TRIPARTITE CONSULTATION PROCESS

The U.S. tripartite consultative process was first formalized in 1975 by the appointment by President Ford of a Cabinet-level committee to advise him on ILO matters. This committee included the active participation of the President of the AFL-CIO and a representative of the U.S. Chamber of Commerce. The Secretary of Labor was the chairman.

On June 18, 1980, President Carter created the "President's Committee on the International Labor Organization." This committee was created as an advisory committee and continues to exist today.

The members of the committee are the Secretaries of Labor, State, and Commerce, the Assistant to the President for National Security Affairs, and the presidents of the AFL-CIO and the United States Council for International Business. The chairman is the Secretary of Labor.

The functions of the committee are:

(1) to monitor and assess the work of the ILO.

(2) to make recommendations to the President or other officers of the Federal Government, including the Secretary of Labor, "With due recognition that in the ILO tripartite system, government, employer, and employee representatives retain the right to take positions independent of one another, the committee shall exert its best efforts to develop a coordinated position as to United States policy on ILO issues."

(3) to perform other functions relevant to relations with the ILO as requested by the President or the committee chairman.

This committee created a subcommittee called the Tripartite Advisory Panel on International Labor Standards. This group consists of legal advisors from the Departments of Labor, Commerce, and State, the AFL-CIO, and the U.S. Council for International Business. The panel is chaired by the Solicitor of Labor. The Panel's principal functions are to develop analyses of the degree of U.S. compliance with selected ILO conventions and to examine the impact of ratification on existing and developing domestic labor law.

FORMAL DECLARATION

Article 5(c)(1) of Convention No. 144 calls for consultations on the reexamination of unratified ILO conventions to consider what measures might be taken to promote their ratification. In an effort to clarify this requirement, Secretary of Labor William E. Brock, in a letter to the Secretary of State dated December 30, 1985, indicated that:

> There is agreement by the U.S. Government agencies concerned, the AFL-CIO, and the U.S. Council for International Business, that each ILO convention will be examined on its merits on a tripartite basis; that if there are any differences between the convention and Federal law and practice, these will be dealt with in the normal legisla-

> tive process; and that there is no intention to change State law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

During the committee hearings on this Convention, this issue was of particular concern to the National Association of Manufacturers (NAM). As a result of these concerns, Senator Moynihan, during the committee markup, offered an amendment to the resolution of ratification which restated this agreement in the form of a formal declaration. This declaration was adopted by unanimous consent.

COMMITTEE ACTION

On October 1, 1987, the committee held a public hearing on ILO Convention No. 144 Concerning Tripartite Consultations. Testimony was received from the following individuals: (1) The Honorable Orrin Hatch (R-Utah); (2) the Honorable William E. Brock, Secretary of Labor; (3) the Honorable Lane Kirkland, President, AFL-CIO; (4) Mr. Abraham Katz, President, U.S. Council for Industrial Business, New York, New York; and (5) Mr. Anthony Freeman, Special Assistant to the Secretary and Coordinator, International Labor Affairs, Department of State.

An additional hearing was held on October 21, 1987, to receive the views of the National Association of Manufacturers on the Convention. Mr. James D. Burge, Corporate Vice President of Motorola, Inc., Schaumburg, IL, testified on behalf of the association.

The committee considered the Convention at its business meeting on December 17, 1987, and voted 15-3 to report it favorably to the Senate with a declaration for its advice and consent. Ayes: Senators Pell, Biden, Sarbanes, Cranston, Dodd, Kerry, Simon, Sanford, Adams, Moynihan, Kassebaum, Boschwitz, Murkowski, Trible, and Evans. Nays: Senators Helms, Pressler, and McConnell.

ENTRY INTO FORCE

This Convention will become binding on the United States 12 months after the date on which it registers its ratification with the Director-General of the ILO.

TEXT OF RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of a Certified Copy of the Convention (No. 144) Concerning Tripartite Consultations To Promote the Implementation of International Labor Standards, adopted by the International Labor Conference at Geneva on June 21, 1976, subject to the following declaration:

> There is agreement by the U.S. Government agencies concerned, the AFL-CIO, and the U.S. Council for International Business, that each ILO convention will be examined on its merits on a tripartite basis; that if there are any differences between the convention and Federal law and practice, these will be dealt with in the normal legisla-

tive process; and that there is no intention to change State law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

ADDITIONAL VIEWS OF MR. HELMS

ILO CONVENTION NO. 144

I have a problem with Convention No. 144, the so-caslled Tripartite Convention for the Implementation of International Labor Standards. I do not like the title, for it implies the very process that I am against—implementing international standards to override or substitute for American law. I do not like the Convention for several reasons:

(1) The Tripartite Convention establishes a process controlled by Big Labor, Big Government, and Big Business, but there is no provision for the 85 percent of the U.S. labor force which is not represented to participate. I refer, of course, to nonunion labor which chooses to be nonunion labor. They have no voice in the process established by this Convention.

(2) The Convention provides for the reexamination of unratified conventions and for ascertaining measures which would help in securing the ratification of those unratified conventions. If we chose not to approve a convention or if we chose never even to bring up a convention for consideration by this committee, then that is that. The Senate should not be in the business of reconsidering conventions that are not worthy of being considered.

(3) The declaration attached to this Convention, as it is currently phrased, is not binding. It is not controlling. It is recommendatory and not mandatory. In other words, at best, it is a declaration of intent only and not a binding limitation on the operation of U.S. law. I do not object to its intentions, but the problem is that they are merely intentions. It is absolutely unacceptable to change domestic law by an international treaty or convention.

Therefore, I oppose Convention No. 144.

APPENDIX

EXCERPTS FROM HEARINGS OF OCTOBER 1 AND 21, 1987

The committee met at 9:30 a.m., in room SD-419, Dirksen Senate Office Building, Hon. Daniel P. Moynihan presiding.

Present: Senators Moynihan, Pell, Sarbanes, Simon, Helms, Pressler, and McConnell.

Senator MOYNIHAN. May I wish a pleasant good morning to our guests and our witnesses.

I ask that the hearing come to order, and I note the many distinguished guests and witnesses who will be before us. We will proceed with some dispatch.

Might I just note that Senator Hatch, who was to have opened this hearing, is necessarily detained on the floor. I would ask the courtesy of our other witnesses that when he does appear, if he could be allowed to be put on directly. As with most Senators this particular day and moment, he is supposed to be at about four places at one time.

Today is, if not a historic occasion, certainly a rare one. For the first time in one-third of a century, the Committee on Foreign Relations has before it not one but two International Labor Organization conventions.

As our distinguished Secretary of Labor and the head of the AFL-CIO well know, the United States joined the International Labor Organization in 1935, the first and only of the League of Nations organizations it did join.

We agreed to a number of maritime treaties early on and only very few since. And in one-third of a century we have not done any at all.

This does not reflect on any lack of energy in labor legislation in our country, but a certain disinclination on the part of this committee, which I think reflects the Senate, as to what is the effect on State legislation of treaties adopted here nationally.

Hence, we have tended to associate ourselves with maritime conventions, where the mandate of the Federal Government is clear. I will not say more about these two conventions, which will be discussed by our distinguished witnesses.

The first is No. 144, which sets forth a procedural standard for establishing administrative machinery to make possible tripartite consultations as between government, employees, and workers relating to ILO matters. It is a good convention, and a useful one.

And No. 147 concerns port States protecting health and safety of seamen manning merchant vessels. I would like to take note of the presence here of Mr. Steven Schlossberg, formerly a distinguished official of the U.S. Government, now representing the ILO here in the International Labor office here in Washington.

I would like to note that owing to simply a misunderstanding, the National Association of Manufacturers has not been scheduled for hearing today. It seemed that there was just not room for them.

They want to be heard, and they must be heard. For the NAM or the Chamber of Commerce not to appear before this committee to discuss an organization they have been involved with for 70 years, as the distinguished senior Senator from North Carolina knows, is simply inappropriate.

I will continue this hearing. We are now seeking a representative of the NAM. We have a statement, we hope they can find someone who can come up and present it to us. If they cannot this morning, we will hold the hearing open and do it another time.

We will now receive an opening statement for the record by Senator Simon.

[The opening statement follows:]

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. Mr. Chairman, I would like to thank you for holding these hearings today on the ratification of International Labor Organization Conventions Nos. 144 and 147. I would also like to extend a warm welcome to Lane Kirkland, president of the American Federation of Labor-Congress of Industrial Organizations.

Mr. Kirkland has led the charge for many years on behalf of the International Labor Organization. These conventions, which would improve employment conditions, including health and safety, on merchant ships and promote the implementation of international labor standards, are worthy of the Senate's consideration. I am certain that Mr. Kirkland will present his case convincingly and will show the International Labor Organization and these conventions to be worthy of our full support.

Once again, I appreciate being able to participate in the potential ratification of these conventions and to read and hear the testimony from this hearing.

Senator MOYNIHAN. Our distinguished friend from Utah, Senator Hatch, is here, and of course, the ranking and much-admired senior minority member of the committee is here, and I am happy to welcome him and his remarks. Sir.

Senator HELMS. Mr. Chairman, you are in an unusually good mood this morning. Thank you very much.

Senator MOYNIHAN. We noted that this only happens once every one-third of a century.

Senator HELMS. Well, thank you, Mr. Chairman. As you have indicated, I join in welcoming this distinguished group of gentlemen, particularly my friend from Utah, Orrin Hatch.

I realize Senator Hatch has been fighting the good fight in the Judiciary Committee, and therefore I appreciate the time constraints under which he and other witnesses, Mr. Kirkland, Secretary Brock, all of them, are operating. Consequently, I am going to be very brief.

Orrin, it is good to have you here. Why do you not come on up to the table? We appreciate the fact that all of you gentlemen are very busy people. We have been a little bit busy on the Senate floor.

At times I felt that I was up to my armpits in alligators, and somebody suggested last night that we drain the swamp. And maybe the voters will do that one of these days.

Anyway, I respect the longstanding commitment of the Senator from Utah to the International Labor Organization, and I know I join the chairman in looking forward to his remarks.

When Senator Hatch was chairman of the Committee on Labor and Human Resources, he was an effective chairman. As I understand it, this is where your interest and association with the ILO began.

I believe there have been only 7 ILO conventions ratified by the United States out of 162 total agreements. The most recent ratification took place in 1953, a generation ago. And the one before that occurred in 1938, if I am informed correctly.

Obviously, there has been a major concern by the Senate with many of these instruments, and that is one of the subjects that I for one am interested in hearing discussed this morning.

And I might add, Mr. Chairman, that I am distressed to find out that an invitation to testify extended to the NAM was rescinded this past Monday. But I understand that you have, you just said that that is now back in effect.

Senator MOYNIHAN. Yes, sir.

Senator HELMS. I will wait until the question-and-answer period to make further comments. I simply wanted to reiterate my regard for all of the witnesses who are appearing here this morning. And I thank the chairman.

Senator MOYNIHAN. Thank you, Senator Helms. And our colleague and much-admired distinguished chairman, Mr. Hatch.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH

Senator HATCH. Thank you, Mr. Chairman. I am delighted to be here. I want to thank you for holding today's hearings, and for the courtesy of your staff as shown in allowing me to testify in this proposed ratification of the International Labor Organization Conventions Nos. 144 and 147.

To me the ratification process is a matter of extreme importance regarding not only the role of the United States and the ILO, but also the role of Congress in formulating labor policy.

The committee should be complimented on the consideration of the present submission of these two conventions. On September 11, 1985, I chaired a hearing of the Committee on Labor and Human Resources to consider first whether there was a link between our failure to ratify conventions and our influence within the ILO itself.

And second, to review the feasibility of U.S. ratification of the ILO labor convention, without creating a detrimental effect on U.S. labor law.

The hearing made it quite clear that our failure to ratify a single ILO convention during the last three decades has undermined the effectiveness of our representatives to this very important organization.

I am pleased to note that Steven Schlossberg is the new representative of the ILO, and I think will do a terrific job. He is a brilliant man with a tremendous background in labor matters.

He has done, I think, a terrific job in many respects down at the Department of Labor. I have developed a personal relationship with him and am proud to have him representing us.

While the ILO has suffered from several political problems that seem inherent in international organizations, it still serves several important functions. Based on the concept of tripartism, it provides a common forum for representatives of employers, employees, and government to fashion labor standards worldwide.

It also provides this country with the unique opportunity to demonstrate favorably its brand of labor relations and employee rights, especially compared to the labor force realities of Communist countries.

This latter feature was perhaps best evidenced by a role in the condemnation by the ILO of the Polish Government's suppression of the Solidarity movement. Unfortunately, when we have criticized Communist violations of ILO standards, our credibility has always been somewhat suspect, given our own refusal to even consider ratifying ILO conventions.

To be taken seriously in this organization, we as a Nation must break away from the policy of the last 30 years that we will not ratify a convention regardless of its content.

Nonetheless, we must also be careful to ensure that Senate ratification of ILO conventions does not usurp this country's traditional bicameral formulation of labor policy. An ILO convention should not be ratified if it would overturn existing Federal or State labor law.

Similarly, ratification of one convention should not be considered sufficient precedent for ratifying others. Each convention has to be considered on its own merit. It is my understanding that to address this latter concern, the President's Committee on the ILO has agreed to certain ground rules governing the examination of ILO conventions.

First, each ILO convention will be examined on its own merits on a tripartite basis. Second, if there are any differences between the convention and Federal law and practice, these differences will be dealt with in the normal legislative process.

And third, there is no intention to overturn State law and practice by Federal action through a ratification of any ILO convention.

The examination will include a review of possible conflicts between Federal and State law that would result from any particular ratification. The committee should be commended for establishing these important criteria. And I do think they are important.

When considered in light of these principles, Convention No. 144, which concerns tripartite consultation with regard to ILO issues, and Convention No. 147, which establishes certain minimum standards on merchant ships, should be ratified.

They will not overturn existing labor law, and Convention No. 144 really mirrors our current practice. Moreover, and more importantly, their ratification will send an important signal to the other members of the ILO.

Mr. Chairman, many of the witnesses scheduled to testify today have played a critical role in revitalizing our function at the ILO. The leaderhsip displayed by Lane Kirkland and Irving Brown is well-established, and much admired by me. And I think by anybody who looks at the issue carefully.

Much credit should go to Secretary Brock for his efforts in getting the Federal Government moving again. Ambassador Katz should also be congratulated for his role in bringing the business community around to its current position.

Mr. Chairman, I again applaud the committee for holding these hearings and hope that my colleagues will join me in supporting ratification of these two conventions. By ratifying Conventions Nos. 144 and 147, we can strengthen and reinforce the position and credibility of our representatives at the ILO.

Under present practice, whenever we have a major case to be made, we have to do it through international organizations rather than straight up on the floor ourselves. And it is really a disadvantage.

In fact, it is a terrific disadvantage to us in our worldwide flight for better labor standards. Sometimes Communist nations adopt even more permissive labor law standards than we do.

Then they proceed to ignore them. We then have a difficult time, because we have not ratified some of these conventions ourselves. We have a very difficult time making a case as an individual nation rather than through others who may or may not make a case as well.

I will never forget a few years back when some of the Arab nations came up with a basic censure resolution against Israel. It was done to embarrass our country, to embarrass Israel that year, and ultimately, I think, to force the expulsion of Israel from the ILO, an action we simply could not tolerate and should not tolerate.

I can remember going over there and the frustrations that attended our going over there, because we could not really get up and lead that fight. It was a tough situlation. Nobody thought we could win.

With the help of the AFL-CIO leadership, our business community leadership and Government leadership, the tripartite cooperation that we had, we were able to turn that fight around and prevent what really would have been a political embarrassment to the whole world, but in particular the ILO, our country, and the democratic nation of Israel.

We could have done a much more effective job, it seems to me, if our hands were not tied because we had basically failed to ratify some of these conventions.

Now, as I have said, that does not justify wholesale ratification of conventions because, as we all know, there is a very good argument in International and constitutional law that a convention ratified by the Senate may supersede existing labor and law and practice.

That is a very, very important consideration, and I think there have to be ways around that difficulty. Our laws may not read as broadly as some of the Communist nations laws, but we give the broadest protections and, it seems to, me the greatest help to employees of any nation in the world.

Perhaps our actions speak a lot louder than the words of some of our competitor nations in the field of labor practice. Again, I appreciate having this opportunity to appear before you. Thank you.

And I encourage you to find some solutions as we have attempted to do in the Labor Committee, so that we can ratify more of these conventions and take the appropriate world leadership role that we really should take in this very important organization.

One last thing. I found that people in this country do not pay a lot of attention to what goes on at the ILO. Part of the reason is because we do not play an upfront role as well as we could.

But every other nation in the world pays attention. And especially Third World nations. And it would be a very, very good thing for us to be able to play a better role.

I personally want to pay tribute to Irving Brown. I do not know of anybody who has done a better job for the free trade union movement, and for world betterment, certainly at the ILO, but I think in many other ways, than Irving Brown.

I have not only a great deal of admiration for his work, but I love the man personnally. And I wish Mr. Schlossberg the very best, and I appreciate the kind remarks you said about him, Mr. Chairman, at the beginning.

[The prepared statement of Senator Hatch appears at p. 63.]

Senator MOYNIHAN. Mr. Chairman, we thank you most exceptionally for your testimony and for the initiative which you have brought to this matter.

I would like to call attention to your point that the ILO is a much more significant institution in other parts of the world, to other labor movements, and to the publics of other nations than it is here.

The American labor movement basically claimed to have founded the ILO. Samuel Gompers was chairman of the commission in Paris which drafted the International Labor Organization's charter. And so the organization is secure with us, whereas with other nations it is only an aspiration.

Labor unions in other nations can make claims on their own society in terms of the standards the international society has set, and we help set them.

It is important also, I think, to remind ourselves that while so many of the nations of the world belong to the ILO, probably not more than one-third of the members of the ILO truly have free labor movements.

Whilst those governments are committed to the constitution of the International Labor Organization, they are committed to language that assumes free trade unions, free enterprise businesses dealing with trade unions, free bargaining, and certain basic rights of workers.

They may not abide by those obligations, but they have incurred them when they signed the ILO constitution. And I do not think we should ever let them get away from that. And it is your judgment, sir, that our failing to ratify even the least convention as they come along dimishes our claim on other states to abide by the ones they have.

Senator HATCH. There is no question about that. And it also diminished our role at the ILO.

And you have, I think, summarized it quite well, in saying that we had a major role in developing the International Labor Organization. And there is no question that other nations pay attention to what happens there.

We almost give it no lipservice at all. And I just have to say some of the great battles over the last two decades have occurred at the ILO, that have had dramatic imprints all over the world.

And our people do not even have any idea about that. And the reason they do not is because we have a very difficult time playing the effective role that really needs to be played.

So you are right, and I just wish I could have made as eloquent an opening statement as you have just made in describing some of the problems. And if we cannot ratify these two conventions that are basically, they are not innocuous, but they certainly are conventions that should be readily ratified by this body.

If we cannot do that, then how in the world are we going to have the type of influence that will really help to create the freedoms all over the world, especially for employees, that we need to assert?

And we are just not going to. We have not, except through the force of will of people like Irving Brown, Charlie Smith, and of course our noble representatives from the State Department and from our Government.

The tripartite nature of this is unique in the world. And frankly, we have worked, our people have done insurmountable jobs with their hands tied behind their backs.

I would like to loosen those binds on their hands, and allow them to go into these battles in a more open and more straightforward and more effective way than we have in the past, even though I have to compliment them for effectiveness.

Senator MOYNIHAN. I think that is an extraordinarily forceful, relevant point. When we do this, we do something not just for our Nation. We do something for our capacity to advance these purposes in the world.

And where there is a free labor movement, there is a free society. Do you know of a nation in the world with a free labor movement that is actively hostile to the purposes of democracy and generally speaking what we call the West?

Senator HATCH. Well, I am sure there are some.

Senator MOYNIHAN. Maybe one or two.

Senator HATCH. But I cannot think of them right offhand. I can think of some who, like the Communist nations, assert publicly that they have a free labor movement.

Senator MOYNIHAN. Ah, yes. But a truly free labor movement means a truly free country.

Senator HATCH. But like the Communists, behind the scenes, do not allow for free trade unionism or a free labor movement, or even a free enterprise system that might augment or foster that type of development. There are a number of countries I would put in that category.

Senator MOYNIHAN. I much agree. Senator Pressler, we just missed you for your opening statement. But you have your colleague here.

Senator PRESSLER. I welcome Senator Hatch. Senator Hatch, we pay 25 percent of ILO's expenses, and we seem to be doing better there than we are in some of the other U.N. organizations.

I have joined with Senator Kassebaum and, I think, you and others in trying to get some reforms in the U.N. I know this is not the same thing.

But is there a danger that by firmly committing ourselves to 120 countries we are going to be heading down the same path in terms of control and so forth?

Senator HATCH. In my opinion, the ILO is a better forum for making free enterprise and democratic arguments and accomplishments than the U.N. itself.

Of course, it is an affiliated organization. But nevertheless, I think it is one of the greatest forums in the world for the freedoms that we espouse in this particular country.

I remember when George Meany led the movement out of the ILO because of the way it had been trending at that time. That took a lot of courage on his part. And in my opinion, it took a lot of character.

Because of that, and because of this administration, there have been restraints in the growth of the budget at the ILO. I meet with Franci Bronchard regularly, when he comes to this country, and I used to go every year to the ILO in Geneva, and would like to resume that. I just have not been able to the last couple of years.

And he complains every time that they cannot do their work as well as they should with the present budget that they have. I believe that they can. But I think we ought to keep in mind this is a very, very penetratingly effective organization, that it would be much more effective in the interests of the Western world and the interests of freedom and free enterprise and employee rights if we did not have our hands tied because of our own inadequacies in failing to ratify these conventions.

Let me make one other point, and I think this is an important point. And that is that we have only ratified 7 of these, 7 conventions out of well over 150 conventions.

And we have not ratified a number of the conventions that are considered the most important conventions. And there is a very good reason why we have not. And I am challenging this committee to find a way around that reason, and to express it.

I am sure my friends who will follow will express it better than I can. But basically it is that if you want to have the freedom of association that we have mentioned and other conventions ratified, they are so broadly written that they might be construed as reinterpretations of our own present labor laws, which neither labor nor management want to see changed.

So there has to be a way of solving the problem of last in time with regard to the ratification of treaties. We at one time thought that the way to do this was of course to have a simultaneous ratification of some of these major conventions, with a reratification subsequent to that convention ratification, or reratification of our current labor laws, so that it is last in time and solves that constitutional inhibition that some people feel exists.

That was unsatisfactory to some of those who argued, especially the business community, who were afraid that they might wind up with wholesale changes even more broad than they are now in our present labor laws.

There has to be a way that we can get around that constitutional difficulty. I think that is one way, and I think it is a relatively easy way. It would take good faith on the part of everybody involved, and it would take probably an hour in the House and an hour in the Senate to get both of those things done in a simultaneous way.

And we could ratify almost every convention at the ILO, and that would give us a tremendous entree to be able to do much more good that we do.

But even so, because of the leadership of people like Irving Brown, Charlie Smith, and others, of course a whole series of Foreign Service people and Government people in that tripartite end of it, we have been very effective anyway.

But nowhere near as effective as we could be playing an upfront, more noble role.

Senator PRESSLER. Well, you seem very confident that this international organization will not turn the tables on us, so to speak, at some future time.

Senator HATCH. No, I am not confident about that. I think if we continue to not ratify these conventions because we cannot find a resolution to what really is a constitutionally difficult labor management problem, I think we are going to consistently lose influence in that organization, which would be a very sorry state of affairs.

Because, like I say, I have respect for the U.N. as a whole. But I think this organization is watched in some respects even more carefully than the U.N. Certainly by people in labor management relations all over the world. And that is where it is at anyway.

Senatory PRESSLER. Is there not a reexamination of the unratified ILO conventions and undermining of the Senate's advice-and-consent authority?

Of course, you said it was a great challenge to this committee. But how would you go about doing that?

Senator HATCH. How would I go about doing what again?

Senator PRESSLER. Well, if we were to reexamine the unratified ILO conventions, how would we do that?

Senator HATCH. The way I would do it is what I hope you are doing here. I would start with the conventions that we ought to automatically ratify. I can name a whole raft of those.

But these two are really test cases. If we cannot ratify these two conventions, then my gosh, we are talking to brick walls here, and it is going to hurt our country, it seems to me.

Once we ratify these we ought to look for others that we can readily ratify without any major threat to current labor management relations and the delicate balance that presently exists there.

And I think we would have cooperation from both sides. I hope so. Although it seems to me that we have more cooperation from my point of view by the trade union movement in this country than we do by the free enterprise business community.

Senator PRESSLER. We have more cooperation from the trade unions?

Senator HATCH. Yes. They see the value of this organization, I think, probably more than any other entity of the tripartite system. And I think that is probably so because they are totally concerned, it seems to me, about workers' rights.

Now, I am not saying that the business community is not, but sometimes I view the business community's participation as damage control to make sure there are not any problems that we will have to deal with subsequently in this country because of mistakes made over there.

They have also, the trade union movement, mainly because of the leadership of Lane Kirkland and Irving Brown, they have also played a much more significant role in foreign policy through the ILO, and in the fight against deprived trade unionism, or should I say the Communist-oriented trade unionism, than any other entity representing our country.

So, I really praise them and compliment them for what they have done for this country, and for the world community, year after year after year over there.

But they, I think, will be the first to tell you today that it is very difficult for them to do their work in the way that they really could do it, and with the help of the other two parts of the stool, without ratification of the conventions.

Senator **Pressler**. What about the Marxist countries? Poland, the U.S.S.R., they are members and they will cast a lot of influence on the other members in the future. How do you see that developing?

Senator **Hatch**. Well, the reason that they have been effective is because we have been somewhat restricted in our ability to, because we are under suspicion by Third World countries because of the lack of ratification of these conventions.

They have ratified many more conventions than we have. Now, they do not live up to them, and we live up to the ones that are unratified. But nevertheless, Third World countries are not always sure of that, and they have a tendency to hold it against us, or at least be suspicious of us because of that.

So, it is much to our advantage to sincerely and in a good faith way go through and ratify the conventions we can, and try to solve the labor law problems that presently exist. I think we can.

It is going to take some innovative, I think, technical and constitutionally oriented minds to do that. And I would be happy to work with this committee, to the extent that my mind may fit that category in some respects, in coming up with solutions to resolve these problems.

Senator **Pressler**. Thank you very much. You sound like an internationalist this morning.

Senator **Hatch**. Thank you. Actually, I have been a strong supporter.

One of the reasons I brought up that particular resolution with regard to Israel was to show how very dramatically it affects the whole world community, because I do not think we thought we could win.

When I left Geneva that Sunday morning, and we had worked with the unaligned labor delegations from all over the world, with Israel, with Arab groups and others, and I had met with all kinds of people to try and tell them that we were concerned about this type of an approach toward Israel, which we thought was political and not in the best interests of the International Labor Organizations.

When I left Irving Brown told me, he said, "Well," he said basically these words, he said, "We really gave it all we had, we really gave it a rip." He said, "We probably are not going to win the next Tuesday, but we did everything we could."

The next Tuesday vote came, and we won. It was one of the few times we really won a major battle. And I attribute that win to the primarily Irving Brown and Lane Kirkland, both of whom were there and who I think did an extraordinary job with the labor representatives from all over the world.

And I was there, I saw them working those people and doing what was right with those people, and putting the best foot forward for our country. They represented us better than almost anybody I have ever seen in foreign policy.

And you bet, I have a lot of respect for them, and if that categorizes me as an internationalist, so be it. Thank you, Mr. Chairman.

Senator MOYNIHAN. I certainly hope that Mr. Kirkland and Mr. Katz were listening, and I wish that Irving Brown were here. Senator Sarbanes.

Senator SARBANES. No questions.

Senator MOYNIHAN. Senator Simon.

Senator SIMON. No questions.

Senator MOYNIHAN. It is very generous of you to take the time off from what I know you are going through.

Mr. Chairman, would you please submit a note to this committee outlining what we can do to increase our influence in the ILO, beginning with ratifying these two conventions, and adding what we might do further?

I think you have made extraordinarily important testimony on a subject that goes back, to the first meeting of the International Labor Organization in Washington in 1919. I do not know that a U.S. Senator has said more important things on the subject since than you have said this morning.

This committee wants to thank you, sir, and ask if you find a moment, to elaborate on your thoughts on how we might proceed. I think from your testimony it is clear that is what we ought to do.

Senator HATCH. I will be delighted to do that, and I just want to express my gratitude for the kind treatment I have received in front of this committee, and again express my commitment to assist in any way I possibly can.

Because this is an important organization. This country gives it short shrift in many respects. Not the leaders, I compliment Bill Brock as well. We would not be here today if it was not for him and his leadership in this area.

But we all have to work together, it seems to me, to be more effective in this world community in this particular area in this really, really important organization. Thank you, sir.

Senator MOYNIHAN. Thank you, Senator Hatch. And we now have the great pleasure, and the infrequent one, of having before us Mr. Lane Kirkland, who is president of the AFL-CIO.

Mr. Kirkland, if you would come forward.

From the time the ILO was founded, there have been 12 Presidents of the United States, and 64 Prime Ministers of France, and heaven knows how many heads of government in other European and American nations. And there have been five presidents of the AFL-CIO.

If we had that kind of stability in this world, it would be a different world. You are in direct succession to Samuel Gompers, who drew up the constitution of the ILO in Paris in 1918. We welcome you, sir.

I wonder if my colleagues would like to welcome Mr. Kirkland before his testimony, or wait until after he has spoken. I know that you have a time problem. Senator Simon.

Senator SIMON. I simply want to welcome him and thank him for his leadership, not only in the labor movement but for this country. I think we are all indebted to him.

Senator MOYNIHAN. We surely are that. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I am delighted to see Lane Kirkland before us, and look forward to his testimony.

Senator MOYNIHAN. Senator Pressler.

Senator PRESSLER. I join in welcoming Mr. Kirkland. I look forward to his testimony very much.

Senator MOYNIHAN. Senator McConnell, why do you not welcome him so that we can show that there is diversity here.

Senator MCCONNELL. Proving that consistency is the hobgoblin of little minds, I would like to welcome you as well, Mr. Kirkland.

Senator MOYNIHAN. Mr. Kirkland would you proceed, and would you introduce your associates?

STATEMENT OF HON. LANE KIRKLAND, PRESIDENT, AFL-CIO, ACCOMPANIED BY EDWARD HICKEY, AFL-CIO

Mr. KIRKLAND. Thank you, Mr. Chairman. My name is Lane Kirkland. I am president of the AFL-CIO.

With me is Ed Hickey, who has represented American workers at ILO conferences on that very important Committee on the Application of Conventions for a great many years.

And he is also serving on our behalf on the Committee of Legal Expertise, a tripartite panel that has been and is examining this question of ratification on behalf of the tripartite group that assembled under the chairmanship of the Secretary of Labor to deal with these matters that have been referred to.

I welcome this opportunity to appear before your committee on behalf of the workers of the United States represented in the ILO to urge this committee to recommend ratification by the Senate of ILO Convention Nos. 144 and 147.

Both of these conventions have been submitted to you for advice and consent with a strong endorsement by the President of the United States.

In the interests of time, I shall not in this appearance comment on Convention No. 147, which is a maritime convention, concerning minimum standards and merchant ships, first, because we understand ratification of this convention is unopposed, and second, because statements on that convention will be made by others primarily concerned with its provisions.

Instead, I shall focus my attention in this statement of our views on Convention No. 144, which provides for tripartite consultations between representatives of our Government, employers, and workers groups, recognized at the ILO at least once a year with respect to certain basic activities of the ILO.

Such consultations have in practice taken place in the United States regularly ever since Convention No. 144 was adopted. In short, we are recommending that the United States support formally, through ratification, what we are already, doing as a matter of choice, with respect to our relations with the ILO itself.

A consensus in favor of ratification of Convention No. 144, as well as No. 147, has been reached by the President's committee consisting of the Departments of State, Labor, and Commerce, the President's Assistant for National Security Affairs, the U.S. Council of International Business, the recognized representative of employers, and the AFL-CIO, the recognized representative of the U.S. workers.

This is a major breakthrough, after over 30 years of frustration in seeking U.S. ratifications of ILO conventions and a few words of explanation are warranted.

First, as the committee knows, the ILO is unique in the respect that it is the only tripartite organization in the United Nations.

It is generally agreed, and it is most certainly our view, that this structure is why the United States has been more successful in accomplishing its objectives at the ILO than at other U.N. organizations.

The most important aspect of the ILO's work is its development of principles and policies for the protection of fundamental interests of workers, particularly in the field of human, rights, the freedom of worker associations, the freedom to organize and to bargain collectively, the freedom from discrimination in empoyment as well as from exploitation in the number of hours worked, wages paid, or in the form of unsafe or unhealthy working conditions.

All members of the U.S. tripartite delegation, Government, employers, and workers, through their delegates and advisors, participate annually in the work of the ILO conference, where conventions and recommendations are adopted.

Work on proposed standards, which may become a convention or recommendation or both, is deliberate and time consuming. Surveys and questionnaires are circulated to all member countries for their views by the Office of the Director General.

These are compiled and a draft of the instrument is then prepared and referred to an appropriate committee for discussion, amendments, and action. This is the first discussion.

Almost invariably, deliberations and committee reports on proposed standards are spread over two succeeding annual conferences. Once these discussions are completed, the committee's report and recommendation is referred to the plenary of the conference, where a vote is taken.

Conventions can be adopted only by a two-thirds majority vote. In the light of this careful consideration and required vote for adoption, it is interesting to note that Convention No. 144 was adopted in 1976 by a vote of 305 in favor with zero against and 70 abstentions.

After a convention has been ratified, the ILO's regular supervisory procedures takes over through its Committee of Legal Experts and its Conference Committee on Application of Conventions and Recommendations.

The Committee of Legal Experts first evaluates whether the conventions are being applied as required by their terms. Where this is not the case, the nature of the failure to comply is discussed in certain selected cases, and becomes the central and most important part of the work of the Conference Committee on Applications.

Another function of the Conference Committee on Application of Conventions and Recommendations is its general discussion of the extent to which member states ratify important conventions.

Here the United States has been the target of considerable criticism on an annual basis. This was the subject of a hearing before the Senate Committee on Labor and Human Resources in 1985, chaired by Senator Orrin Hatch.

As stated in the letter from Secretary of Labor Brock of December 30, 1985, to Secretary of State Shultz—which is attached to the President's letter of transmittal of Convention No. 144 to the Senate—the criticism of the U.S. failure to ratify ILO conventions, particularly in the field of human rights, is a longstanding problem in achieving our aims with the ILO.

For that reason, I think it is important to repeat to this committee two essential points from my 1985 testimony before the Labor Committee.

The first point concerns the statistical record itself. Of the 162 conventions adopted by the ILO, the United States has, to date, ratified only 7—6 are maritime conventions and 1 is a purely procedural convention transferring the ILO from the League of Nations to the United Nations.

Of the six maritime conventions, two have not received a sufficient number of ratifications to enter into force, that leaves a net of five ratifications by the United States in effect.

Of the countries with a comparable length of ILO membership, only one, El Salvador, has fewer ratifications than the United States. By contrast, the Western European members of the European Economic Community have an average of 70 ratifications. And some have more than 100.

My second point is that improvement in our ratification record is not solely in the interest of the working people of the United States but also in the political interests of the United States and in the interest of meeting our responsibilities to the ILO.

As proof of this we have only to look at the concluding paragraph of the letter of transmittal of Convention No. 144 by the President to the Senate where he states: "Because the United States is a party to so few ILO conventions, we are vulnerable to criticism when we seek to take others to task for failing to adhere to instruments we ourselves have not ratified."

We have, as the President's letter suggests, been under an ever-increasing barrage of stinging criticism not only from our adversaries but also, in recent years, from our friends and allies in the world community who view with puzzlement and disappointment the ratification record of a nation that prides itself as the champion of human rights throughout the world.

Yet, we have ratified none of the human rights conventions. As Secretary of State Shultz, who should know, emphasized in the statement which he made before the Labor Committee: "It is my judgment that an improved ratification record would have served U.S. foreign policy interests better. More importantly, I believe a better record can help us in the future."

Now, let me turn to what has been accomplished since my appearance before the Labor Committee in September 1985. After considerable discussion of the then-existing impasse and the importance of a serious effort to resolve it, a compromise was reached at the meeting of the President's committee on October 17, 1985.

A subcommittee called the Tripartite Advisory Panel on International Labor Standards (TAPILS), on which my colleague Ed Hickey, here with me today, sits as the legal representative of the AFL-CIO had submitted a report to the President's committee of its unanimous conclusion that there were no obstacles, in law or practice, to ratification of Convention No. 144.

The President's committee, in adopting this report of its subcommittee of legal advisors took up and resolved by unanimous action future handling of ILO convention.

The agreement reached on procedure to be followed sets forth a formula of governing principles by providing that: one, each ILO convention will be examined on its merits on a tripartite basis; two, if there are differences between the convention and Federal law and practice, these will be dealt with in the normal legislative process; and three, since there is no intention to change State law and practice by ratification of ILO conventions, the examination will include possible conflicts between Federal and State law that would be caused by ratification.

This is a beginning. We have a formula for considering ILO conventions. And, as a result, the President has presented to the Senate for ratification a key ILO convention.

I hope and trust that this will be first step toward more hospitable consideration of some of the ILO's human rights conventions.

That completes my statement, Mr. Chairman. I will be happy to respond to any questions.

[The prepared statement of Mr. Kirkland appears at p. 67.]

Senator MOYNIHAN. And a very powerful statement indeed, Mr. Kirkland.

As you mentioned, it is important to note that we are acting here at the behest of the President, his Cabinet, and representatives of business and labor as we move toward a more hospitable consideration of some of the ILO's human rights conventions.

This has been a major change, though it is not a precipitous one.

The ILO began with a mind to the problems that labor legislation in a particular country presented that country with respect to other countries without comparable standards, and to what economists call innovator costs.

The first State to protect coal miners was at a disadvantage with States that did not. And in the United States, we have national legislation for exactly the same reason, so that no State is at a disadvantage to another.

But now we move to a much larger plane and a more important one, which is the respect for elemental human rights, of which the trade union movement everywhere is an advocate, and which the

ILO constitution, just like the U.N. charter, commits members. Even if they do not abide they are committed.

It is our view that we can break out of one-third of a century of inertia; with these two conventions we can move forward into this human rights area.

Mr. KIRKLAND. I think there are obstacles, I think there is resistance.

But I think it is important that we should begin the process and have as our goal the realistic examination of these instruments on their merits, without ideological barriers.

We have a formula to overcome any of the objections that have been raised heretofore about our addressing these matters, and with good faith on all sides in this tripartite framework, I see no reason why it should not be possible. Certainly it would be in the best interests of this country, not only because of the inherent importance and significance of the principles that they involve, but from the standpoint of this country's posture in the world, it is the preferred way to advance its interests.

This is an area where this country has a comparative advantage in asserting its interests and playing a forceful role in world affairs. We have a comparative advantage in values.

We do not have a comparative advantage in covert military adventures. I think the other side has a comparative advantage in that area. To me it seems prudent to work most forcefully in those areas where we do have an overwhelming comparative advantage, and not to tie our own hands and hobble ourselves and discredit ourselves in that effort.

Senator MOYNIHAN. I do not know that anything could be added to that statement. And knowing of your pressure of time and of Secretary Brock's, I will forgo what I would like to continue for a long time.

Our revered, distinguished chairman has joined us, which is a mark of the importance he assigns to this occasion: The first time in one-third of a century that we have an ILO convention before us. And on the recommendation of the President.

Would you like to say something, sir, at this point?

The CHAIRMAN. Not a thing. Except that I wanted to just test the atmosphere and come to the hearing and see Mr. Kirkland and get the feeling.

Senator MOYNIHAN. We had a very warm and encouraging testimony from Senator Hatch in the beginning. Senator Sarbanes has been here, Senator McConnell, Senator Helms, and now Senator Pressler.

Senator PRESSLER. Thank you very much. Would this convention have the effect of bringing the health and safety standards on the ships of ratifying countries up to the standards required on U.S. ships, so that American seamen on foreign ships would also be protected?

Mr. KIRKLAND. I do not believe that, so far as I understand the convention, that it would in any sense meet American standards.

In fact, the level of standards on ships in competition with American ships, the dwindling number of American-flag ships, are far below our standards. There are countries whose flags these ships fly whose standards will still be above the criteria of this convention and, as I understand it, which still are below those that we require of American-flag ships.

Senator **Pressler**. Is there a chance that some of these treaties and conventions could be used to replace domestic legislation?

Many of the ILO conventions might have that result. That is, change domestic labor statutes by an international convention. Do you see a problem here?

Mr. **Kirkland**. Senator, there are elements of American labor law that I have a very, very strong desire to change. I have made no secret of that.

In fact, I declared openly and proudly, I do not think the laws governing labor relations in this country are fair or evenhanded, or that they carry out the purposes for which they were originally enacted.

But the day that I undertake to affect that objective by a process that requires a vote of two-thirds of the Senate, instead of doing it by the normal legislative process of a majority of both Houses, even with 60 votes I need in the Senate to overcome a filibuster, is the day I think I will be ready to be taken to St. Elizabeths.

I think the whole concept of this argument that there is a danger of the use of these conventions to affect changes in basic American labor law is absurd on its face.

Senator **Pressler**. But essentially would it not have that effect if we adopted some conventions?

Mr. **Kirkland**. I presume, and I believe, that if I can get a two-thirds of Senate, I can get a simple majority of both Houses.

In any event, besides that, we have an understanding that I referred to in my statement, and I will repeat it, that will be the guiding principle in our approach to the future review of these conventions, under the aegis of the President's committee, which has representatives of the relevant Departments is the Government, as well as labor and management.

They are:

One, that each ILO convention will be examined on its merits on a tripartite basis, that means with input by labor, by management, and by Government—State Department and NSC;

Two, if there are differences between the convention and Federal law and practice, these will be dealt with in the normal legislative process. In other words, absent a legislative approach involving both Houses, that convention would not be ratified; and

Three, since there is no intention to change State law and practice by ILO convention, the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

Well, I know of no other more effective or clearcut safeguard that one can put in place to, aside from simple common sense that I referred to first, the at would avoid that prospect.

Senator **Moynihan**. Thank you, Senator Pressler. I think that Mr. Kirkland's testimony is very effective and concise response to the concern about overridding legislation.

I think the thrust of your testimony, Mr. Kirkland, and Mr. Hickey, is that we have to move in the direction of the human rights conventions. Such a move is in the global interests of the United States.

And not that these conventions cannot apply to us ourselves. But we have those standards here, and we want to advance them elsewhere. And that is what you are basically proposing, is it not?

Mr. **Kirkland**. It is my understanding that the committee of legal experts, and we use the acronym TAPILS for it, that works under this President's committee, is apparently examining Convention No. 105, which adresses the subject of forced labor, whether or not that can get the necessary support.

Senator **Moynihan**. There you are. So what do you say we try to move forward with what we have here, show we can do it, and maybe begin a new era on the old-established relationship between the United States and the ILO.

I think this is a moment to be proud of and be pleased about. You have worked a very long while to bring us here, and we want to thank you. We know you have to leave. I understand you are giving a eulogy this afternoon at a memorial service in New York City for Bayard Rustin.

I am not authorized in advance to do this, but I know that I would have no difficulty getting retroactive approval. If you send the compliments of this committee to an audience gathered in memory of an extraordinary man who has changed not just this Nation but the world, a man who showed the world what peaceableness and intelligence and courage can do.

Thank you, Mr. Kirkland.

Mr. **Kirkland**. Thank you, Mr. Chairman.

Senator **Moynihan**. We now have the rare pleasure of welcoming the most distinguished Secretary of Labor to this committee, Secretary Brock.

We are aware, sir, that you too have time constraints. You might want to tell us what they are, and we will abide by them with great reluctance, because we would like to see as much of you as we possibly can on as many occasions as we possibly can.

STATEMENT OF HON. WILLIAM E. BROCK, SECRETARY, DEPARTMENT OF LABOR, ACCOMPANIED BY GEORGE SALEM, SOLICITOR, DEPARTMENT OF LABOR

Secretary **Brock**. Well, Mr. Chairman, all of your witnesses have time constraints. And I guess I have to respect the needs of those who had flights. Mine are a little less bound by external events.

But I would hope to be able to finish up in certainly no more than 20 to 25 minutes, at the outside.

Senator **Moynihan**. Fine.

Senator **Pressler**. Mr. Chairman, I would like to join in welcoming Secretary Brock. I must say that I have to leave, but I have five very rigorous questions, which I would like to leave for the record.

These were prepared for Senator Helms, therefore they are very rigorous. Five questions. If you would ask the most difficult on the record.

Senator **Moynihan**. I will ask what seems the most difficult and get the rest in writing.

Senator **Pressler**. I must leave in about 5 minutes.

Senator **Moynihan**. Mr. Secretary, would you introduce your associate.

Secretary **Brock**. I am accompanied by George Salem, who is the Solicitor of the U.S. Department of Labor.

Senator **Moynihan**. Mr. Solicitor, we welcome you to this committee.

Mr. **Salem**. Thank you, Mr. Chairman.

Secretary **Brock**. I appreciate your invitation, and your interest in this subject. I am going to discard my——

Senator **Moynihan**. It will be placed in the record as if read.

Secretary **Brock**. I have just been stirred to a couple of thoughts by the testimony of my friends, Orrin Hatch and Lane Kirkland, and some of the questions that this——

Senator **Moynihan**. Mr. Secretary, if you could bring that microphone closer so that the people in the back could hear.

Secretary **Brock**. If I may, I am just going to wing it a little bit.

I am, without any apology whatsoever, an internationalist, because I have children and grandchildren and friends and people that I love, and I do not understand how in the world we expect to build a society or a world in which they can live in peace unless there are free men governing the other nations of the world.

This Congress some few years ago authorized the establishment of the National Endowment for Democracy. Lane Kirkland, Orrin Hatch, and I, all three, served on that endowment board.

Our purpose is to support the institutions which allow free men and free women to maintain their freedom, or to establish their freedom, or to obtain their freedom.

We support free labor movements, free business associations, a free press, free and pluralistic political parties, I think to the considerable advantage of the United States and its citizenry, and to the considerable enhancement of the prospect of peace.

That is an international organization in the true sense of the word. When I look at something like the ILO, I think that is a unique international organization that enhances the purposes that we have sought, the enhancement of freedom and free institutions.

It is the only international organization that has three equal components from each country. It requires a tripartite process of free business, free labor, and free governments, hopefully, to work together to establish their positions.

And I think that is important. I think it is important for use to nurture and to sustain such organizations. And let me say that I respect and compliment those people who, in the present or in prior years, have raised questions, such as the Senator did just a moment ago, Senator Pressler, about whether or not a convention should be used to overturn or circumvent U.S. law.

But I really believe, Mr. Chairman, it is time to discard the shibboleth of the Bricker amendment and the concerns raised at that time. The Supremacy Clause of the U.S. Constitution is not at risk and has no prospect of being at risk. I hope, in this day and time.

What we have sought to do by bringing these conventions to you is to begin a new look at how we can strengthen the cause of establishing opportunities, opportunities for free people and opportunities for people to obtain their freedom around the world through this organization.

We formed first the President's committee, and then the advisory committee, to look at every convention in turn to be very sure—as

Lane Kirkland testified, and so did Orrin Hatch—that we were taking no actions that in any way could be considered an erosion or an adverse effect upon U.S. law.

Now, what we are suggesting today is the approval of two conventions. One, relatively, I think, acceptable to all parties, relating to maritime law and to safety on the high seas.

The other convention——

Senator PRESSLER. Before I go, if I may just interject there. It still is true, as Mr. Kirkland said, if you can get 60 or 67 votes for a treaty, you certainly can get 50.

The fact of the matter still remains, if we agreed to an international convention, it could supersede, or essentially make, domestic labor law.

Secretary BROCK. That is true of any treaty, Senator, and you do that all the time.

Senator PRESSLER. But I think we should just say that is true.

Secretary BROCK. But you do not refuse to consider treaties.

Senator MOYNIHAN. The Constitution says that the treaty shall be the supreme law of the land.

Secretary BROCK. I happen to think that is a logical provision of the Constitution.

When we bind ourselves to international agreements, that should be binding on all of our citizens and all of our States. There is nothing wrong with that.

But the Constitution at the same time requires that it take a two-thirds vote of the Senate to do so. That is a much higher standard than the changing of U.S. domestic laws.

We can change U.S. domestic laws with a majority vote in both bodies. Very simple, easy. It is a lot easier to do that than it is to pass a treaty with a two-thirds Senate vote.

What we are saying to you, though, Senator, is that this convention simply requires that in the consideration of future conventions, which we would support or send to you, we have to have the support of a tripartite analysis.

All this convention does is to say that business, labor, and Government, all three, have to look at that proposed convention, and under the additional standards that we establish here, has to reach the conclusion that it does not change U.S. Federal or State law.

Now, I do not see how you can ask for more protection than that. I really do not. But that is essentially what we are saying.

Let me just make one last point. I think it was Lane Kirkland who said that the convention was approved in the ILO by a vote of 305 to 70, to zero opposition and 70 abstentions.

I want to know for the record that the 70 abstentions were primarily the Soviet Union and the Communist block, and the reason they opposed it is because they do not allow, nor will they tolerate, free trade unions and free business associations.

So tripartitism is not an effective concept in a society that is not free. I think that is an important part of the record.

[The prepared statement of Secretary Brock appears at p. 72.]

Senator PRESSLER. Thank you very much. I think it is very important to get that on the record. And I must excuse myself. I apologize.

Senator MOYNIHAN. You have been very kind to be here. And I have some rigorous questions.

Secretary BROCK. I will be happy to respond to your questions, Mr. Chairman.

[Questions submitted by Senator Helms to Secretary Brock appear at p. 153.]

Senator MOYNIHAN. Yes, a couple of things. With respect to the specifics of the two conventions before us, we have two messages from the President, both of April 11, 1986.

By our standards, this not the longest time it takes to get around to do these things. The first convention has to do with the minimum standards of merchant ships. And Lane Kirkland, who is a former merchant mariner himself, points out that it is a minimum standard indeed, far below anything we have in practice and law. And probably far below that of most ships now at sea.

The other convention, however, is more important. Ratifying ILO convention No. 144 would be a departure for us. We would, for only the second time, adopt an ILO convention that was not a maritime convention. The only other time was ratifying the simple convention which acknowledged the movement of the ILO from the League of Nations, to the United Nations. I might add that the ILO was the only organization to make that move.

Ratifying such a convention was procedural. Ratifying ILO convention No. 144 would state our interest in seeing if we cannot make use of that great body of ILO conventions adopted over the last 70 years is to the purpose of advancing the interests of the United States.

We have this entire body of public international law. If we subscribe to it, our action strengthens the law and acts a claim on the people who have subscribed to the law and do not abide by it. Does it not come down to that?

Secretary BROCK. Yes, absolutely.

Senator MOYNIHAN. And if we ratify this convention, we are taking the opportunity to demonstrate that we take the ILO and international law seriously, and we expect others to do the same.

You see this as an opportunity, Mr. Secretary?

Secretary BROCK. I certainly do.

Senator MOYNIHAN. And you see it as an opportunity not to promote international law, but also to increase the standing of the American business and labor communities in the world.

Secretary BROCK. That is right.

Senator MOYNIHAN. And is it not the case that, as we look at international relations, we are very much state- and government-oriented. By state I mean, national states.

And we tend not to pay sufficient heed to the role of nongovernmental organizations in international affairs.

Secretary BROCK. That is right.

Senator MOYNIHAN. The International business community has been active since early in this century. And indeed, the AFL–CIO, our American labor movement, has been part of the international labor movement since the 1890's.

Long before there was an American involvement in these issues, our business organizations were involved and our labor organizations were involved. They led the Government into these matters. Would that be fair to say?

Secretary **Brock**. Absolutely.

Senator **Moynihan**. And we should not leave the Communist nations behind. They were there first, and they speak with a unique voice. They have not triumphed in this century, although at one time it looked like they might.

We have triumphed, but what distinguishes us is not that we have, a government. Communist nations have governments too. What distinguishes us is that we have a trade union movement, and they do not.

Secretary **Brock**. That is right.

Senator **Moynihan**. And every time we say that, we say something they cannot answer. And every time we are joined in a convention that others have joined in, and say, "Why do you not join. Or having joined, why do you not abide by your treaty obligations."

That is a problem for them. It seems to me an extraordinary leverage that we ought to exercise.

Secretary **Brock**. It is. You know, I think, Mr. Chairman, we do not understand, because we are so used to the blessings that we have in this country.

We do not understand that every single American citizen is protected by a Constitution that is inviolate, and that if an individual is abused under that Constitution, he or she can go to a court. And that court can override the Congresss, the President of the United States, or anybody else, in protection of the individual.

There is no such protection for most of the people of the world.

Senator **Moynihan**. Most of the people of the world have no such protection.

Secretary **Brock**. That is right. And what we are trying to do here is to extend similar types of protection. Not to affect us in any negative way, but it does offer opportunity to those citizens in the rest of the world to have at least some hope that they could achieve some of the freedoms that we have here in the United States.

And when you have the cooperative of business, and of labor, and of Government in seeking that goal, you have something really important happening. Because business and labor understand that they have a stake in a more stable and more peaceful and more free world.

The American worker, whose job is displaced by slave labor, has an intense interest in seeing the abolition of slave labor in the rest of the world.

And American businessman, who loses a sale because of competition from forced labor, has an intense interest in seeing the elimination of forced labor in the rest of the world.

And that is what we are here about, if we begin this process, here, to establish a process in the United States, via the acceptance of this convention, that we will use a tripartite mechanism. That is all we are saying.

We will use it, as we already do, under a Presidential Executive order. This is nothing new. We already are using the mechanism. But we will use that to extend our analysis of these conventions that could defend American workers and American business against unfair practices.

We are taking a step forward, not only in the cause of freedom, but also in the cause of economic equity. And that makes sense to me.

Senator MOYNIHAN. It makes sense to me as well. We have been struggling with that issue on the trade bill, as a matter of fact.

I am not going to keep you, but for one last question. You have been very generous. We know what your schedule was, and the solicitor, I am sure, might help here.

The Vice President, your colleague in the Cabinet, is in Poland. He has met both with the Jaruzeiski government, and with Mr. Walesa of Solidarity.

I would think it almost certain that the Polish Government has ratified the Freedom of Association Treaty, a convention which the ILO adopted about 1922, if I am not mistaken. It that right, sir?

Mr. SALEM. That is correct.

Senator MOYNIHAN. So the Government of Poland is by treaty, obligated to allow the free trade union Solidarity movement in Poland to organize and bargain collectively.

They are by treaty bound. Are they not, sir?

Secretary BROCK. Absolutely.

Senator MOYNIHAN. And they do not allow that.

Secretary BROCK. That is correct.

Senator MOYNIHAN. Therefore, they are in violation of their treaty.

Secretary BROCK. That is correct.

Senator MOYNIHAN. We are asked to give credit and lend money and give help to that country. But if they will violate so fundamental a treaty, why should they keep agreements with us about borrowing money?

And why should we not be able to say to them, "If we had ratified that convention, we would be in a stronger position"? I do not know that we need to, but if we were actively part of this convention system, we could make that claim.

I am going to ask the State Department representative, Mr. Freeman, this question: In the Vice President's briefing books, was any mention made of the ILO conventions on freedom of association?

That is a fair warning. The point is, the United States should go around the world and say, "Why do you not keep your treaties here?" We abide by these principles, and the other decent countries do. We should tell offending countries that they ought to also. It is good for them. We should tell them that if they did that they would not have to be importing grain, maybe.

Secretary BROCK. That is right. It is so important. Obviously the issue has been raised about Polish nonobservance of its obligation.

And they and their colleagues in the Eastern bloc have desperately resisted ILO surveillance and the opportunity to enforce that. But they stand exposed, Mr. Chairman, in that abuse.

They stand exposed, not just to those of us who are looking at Poland from the United States, but to everyone around the world. And their words are hollow, because they do not mean anything, because they do not back them up, because they do not keep their word.

And that says something very important to nations that are trying to choose what their course should be, in association with the free world or the Polish world. That is important to the well-being of the United States.

Senator MOYNIHAN. I do not think it could have been said more effectively than you have done, nor could anyone speak with your authority in these matters.

You have served in this body with such great distinction, and now in the Cabinet of this President with such great distinction. And you have brought life to an enterprise that might have seemed defunct, and which was an opportunity we were missing.

We are much in your debt for doing it. And I would like to express the great admiration which this committee has for you.

Senator Helms has five questions. As Senator Pressler mentioned, if you would take them away with you and give us an answer in writing, we would appreciate it. We thank you very much for your time, sir, and we welcome you to the committee, Mr. Solicitor.

Secretary BROCK. Thank you very much, Mr. Chairman.

Senator MOYNIHAN. Before we call Mr. Katz, may I say to Mr. Schlossberg in the back there that the ILO office in Washington has been open for 50 years.

And do you not think you could find one copy of the ILO constitution? Why do you not carry one around in your pocket?

Mr. Schlossberg. I will from now on.

Senator MOYNIHAN. Why do you not send for one? We cannot find one.

Now, Mr. Abraham Katz, president of the U.S. Council for International Business. Mr. Katz, we welcome you, and you obviously are bringing a platoon of associates. If you would just introduce them, we shall be very grateful.

STATEMENT OF ABRAHAM KATZ, PRESIDENT, U.S. COUNCIL FOR INTERNATIONAL BUSINESS, ACCOMPANIED BY BRIAN J. GLADE, DIRECTOR, INTERNATIONAL LABOR AFFAIRS, U.S. COUNCIL, PHILIP J. LOREE, CHAIRMAN, FEDERATION OF AMERICAN CONTROLLED SHIPPING, AND EDWARD E. POTTER, LEGAL COUNSEL ON LABOR ISSUES TO U.S. COUNCIL

Mr. KATZ. Senator, I will introduce my colleagues. But first, can I supplement your vast knowledge of the ILO with a copy of the constitution?

Senator MOYNIHAN. Yes. You have got one.

Mr. KATZ. I am embarrassed. I thought our lawyer brought it with us.

Senator MOYNIHAN. I see Mr. Schlossberg——

Mr. KATZ. We can have it delivered today.

Senator MOYNIHAN. Good.

Mr. KATZ. Senator, I am Abraham Katz, president of the U.S. Council for International Business. I serve as U.S. business spokesman on ILO matters in the President's Committee on the ILO. And I am an elected employer member of the Governing Body of the International Labor Organization.

On my immediate right is Brian J. Glade, who is Director for International Labor Affairs for the U.S. Council.

On his right Philip J. Loree, Chairman of the Federation of American Controlled Shipping, and Vice Chairman of our shipping committee in the U.S. Council. He is here in case you want to ask some questions on Convention No. 147.

To my left, Edward E. Potter, an attorney with the law firm of McGuiness & Williams, who serves as legal counsel on labor issues to the U.S. Council. And Senator, he is the management representative on this legal advisory panel that has been mentioned before, TAPILS.

Now, just a word about the U.S. Council and who we are here. We are the organization that represents American business interests on international economic policy issues at the major international economic institutions, and to the executive and legislative branches of the U.S. Government.

We are the U.S. member of the International Chamber of Commerce. And as such, we consult with various bodies of the United Nations. The U.S. Council represents business views in the Organization for Economic Cooperation and Develpment in Paris, as the U.S. member of the Business and Industry Advisory Committee to that organization.

And more particularly relevant to these hearings, the U.S. Council is the U.S. member of the International Organization of Employers and has been the organization representing U.S. business in the ILO since 1979.

Now, In previous years, the National Association of Manufacturers and the U.S. Chamber of Commerce have had this responsibility on behalf of U.S. business. When the United States went back into the ILO, the business organizations decided that the U.S. Council should handle the ILO, among its other international responsibilities.

And I want to stress that both the NAM and U.S. Chamber are our members.

Senator MOYNIHAN. Now, Mr. Katz, could we stop right there to get this clear.

The U.S. Council and the NAM are members of the U.S. Council for International Business?

Mr. KATZ. The NAM and the U.S. chamber are members of the U.S. Council for International Business.

Senator MOYNIHAN. Right. I had a particular experience there. I was our representative to the United Nations, and I drafted the letter that said we were giving our 3-year notice of intention to leave the ILO because of the treatment of Israel and some other matter.

And it happened that I was in the Senate when the time came to rejoin the ILO because the organization had changed its ways.

The letter I drafted said, "We do not want to leave, but we will, if you do not abide by the constitution." When they did, we came back. And in the relationships that had been put in place in 1934. It seems a better thing to do.

Mr. KATZ. That is my understanding. This happened before my time. But I was in the Government at that time as Assistant Secretary of Commerce, and I participated in the President's committee meeting at which the decision was made.

And as I recall, my predecessor in the U.S. Council, David Grove, was there, representing the U.S. Council. I recall Charlie Smith at that time was representing the U.S. Chamber. And I believe there was an NAM representative in the room.

But sometime after that decision was made, the decision was also made by these organizations that we would handle the whole question of participation in the ILO, as we do in the International Chamber of Commerce, and in the BIAC.

Senator MOYNIHAN. A certain amount of organizational neatness.

Mr. KATZ. Partly so. I must say, when I was an ambassador to OECD, I was concerned when the U.S. Chamber and the NAM withdrew from what was then a sort of tripartite business participation in the BIAS of the OECD, the Business and Industry Advisory Committee to OECD.

And I called on both, on the presidents of both organizations, Dick Lesher and Sandy Trowbridge, and both assured me that the U.S. Council had this priority. At that time I was not interested in the U.S. Council as such. I was interested in the legitimacy of American business representation in the OECD.

And both presidents assured me that by virtue of their membership in the U.S. Council, the U.S. Council's representation of the business community in the OECD was broad based, and therefore legitimate.

I believe the same thing holds very true in the case of——

Senator MOYNIHAN. Got you. I am sorry to interrupt you, but that is an important point that needed to be made.

Mr. KATZ. And by the way, I just wanted to add that members of both the NAM and the U.S. Chamber do attend our meetings and vice-versa. So there is a good deal of interchange.

Since the United States joined the ILO in 1934, it has taken a careful and cautious approach to the ratification of ILO conventions.

And you have heard before, and I will skip over this part of my written testimony, that the record of ratification consists really of only six maritime conventions and one technical convention, having to do with the dissolution of the League of Nations and the establishment of the U.N. as the parent body of the ILO.

Then on April 10, 1986, the President submitted the two ILO conventions that are the subject of this hearing to the Senate for its advice and consent. The first convention concerrns No. 147. Let me dispose of that.

This concerns minimum maritime standards that in general would improve emloyment conditions, Including health and safety on merchant ships.

The U.S. Council supports ratification of this convention, with the five understandings proposed by the President, which clarify the domestic application of Convention No. 147.

We do not believe that Convention No. 147 would have any appreciable impact on either U.S.-flag, merchant vessels, or U.S.-controlled vessels, registered abroad. Most of the latter are registered in Liberia, which has ratified the convention some time ago.

The real impact of the convention would be on substandard operators who represent the small minority of shipowners throughout the world.

We believe that ratification of Convention No. 147 would serve a worthwhile purpose either in encouraging substandard operators to upgrade living and working conditions on their vessels, or alternatively, in compelling them to keep substandard vessels out of U.S. ports.

Ratification of this convention would be consistent with the past practice of the United States to ratify only ILO maritime conventions.

Phil Loree is here and is quite prepared to answer any questions that you may have on the details of this convention, from the point of view of the employers in the shipping industry.

The merits of ratifying the second convention, Convention No. 144, are far more controversial from the business community perspective.

If ratified, Convention No. 144 would be the first consequential, nonmaritime convention ratified by the United States, and thus it would set a precedent for the ratification of other ILO conventions that may conflict with U.S. labor law.

Moreover, the business community is not convinced that ratification of Convention No. 144 would significantly improve U.S. effectiveness in the ILO, as the proponents of ratifications claim.

And we went into this a good deal in Senator Hatch's hearings, and I can respond to that, if you wish. But let me go to the heart of my argument.

Convention No. 144 requires each ratifying country to establish tripartite administrative machinery on certain matters concerning the ILO, as set out in article 5 of that convention.

Through the President's Committee on the ILO, and its subordinate bodies, the United States already is in compliance with the procedural requirements of this convention. However, the implementation of one provision of article 5 is of a particular concern to the U.S. business community.

Under article 5(1)(c), the United States would be required to reexamine, and I quote, "at appropriate intervals unratified conventions and recommendations to which effect had not been given to consider what measures might be taken to promote their implementation and ratification as appropriate."

The business community is concerned because many of the ILO convention to be examined are at variance with U.S. law and practice both at the Federal and State level.

By virtue of its membership in the ILO, the United States, under the ILO constitution, which you are going to get from us, or from Mr. Schlossberg——

Senator MOYNIHAN. We have it.

Mr. KATZ [continuing]. Has an obligation to consider whether any ILO conventions are appropriate for ratification.

So when we reentered the ILO in 1979, the United States began to fulfill this obligation through the legal examination of unratified convention by the Tripartite Advisory Panel, TAPILS, which is a subgroup of legal representatives of the President's committee, to determine whether any ILO conventions could be ratified without amending U.S. labor law and practice.

Between 1980 and 1983, preliminary consideration by TAPILS of the legal impact on domestic labor law of a number of ILO conventions, concerning collective bargaining, equal treatment, and forced labor, identified a number of possible differences between various provisions of those conventions, and the requirements of U.S. labor law that require more indepth legal review.

To date, the only conventions that TAPILS has concluded could be ratified without amending U.S. labor law and practice are Convention Nos. 144 and 147.

Now, ratification of Convention No. 144 would reinforce the obligation under the ILO constitution to consider ratifying ILO conventions by mandating a procedure for periodic reexamination of the over 150 ILO conventions that have not been ratified by the United States.

As the preliminary consideration of the other substantive conventions has revealed, many of them may have requirements different from existing U.S. law and, unlike the two ILO conventions now being considered for ratification, involve matters for which their is concurrent Federal and State jurisdiction.

The differences between U.S. labor law and the requirements of ILO conventions can be substantial. For example, whenever, the subject of ratification of ILO conventions comes up, the suggestion is made that Convention Nos. 87 and 98, concerning freedom of association, the right to organize, and collective bargaining, should be ratified.

In 1984, the first exhaustive and indepth study of the legal consequences of ratification of any ILO convention was completed with respect to Convention Nos. 87 and 98 by Ed Potter, who is sitting to my left, who represents us on TAPILS.

The results of this study, which have not been challenged in any material respect, Senator, were published in a monograph entitled, "Freedom of Association, the Right to Organize, and Collective Bargaining." We can provide a copy.

Senator MOYNIHAN. Would you? And that will be placed in the record.

Mr. KATZ. The study identifies 20 significant changes in U.S. labor law that would result at either the Federal or State levels in the public or private sectors, if Conventions Nos. 87 and 98 were ratified by the United States.

Now, these are not matters of detail. Rather, they involve some fundamental precepts of U.S. labor law. For example, just to mention three changes that would occur if Nos. 87 and 98 were ratified.

There ratification would, first, alter a fundamental principle of U.S. labor law, that makes union rights derivative from those of employees by subordinating employee rights to those of labor organizations.

Two, it would broaden the classes of employees entitled to National Labor Relations Act-type protection to include supervisors, agricultural workers, and public employees.

And three, it would revoke or modify substantial parts of the Labor Management Reporting and Disclosure Act of 1959, particularly with respect to election procedures and prohibitions against persons with criminal records from holding office, union office.

Now, since the National Labor Relations Act was enacted in 1935, Congress has enacted major revisions to the statute only twice, in 1947 and 1959. Significant amendment of U.S. labor law through the normal legislative process, involving both Houses of Congress, has been the exception rather than the rule.

As a result, Federal collective-bargaining legislation has been relatively stable in the United States, and in the view of the business community, has on the whole contributed to the success of our economy in generating jobs.

Consequently, just an aside, Senator, the fact that the countries of the European Community have embraced to a greater extent a lot of the detailed standards of the ILO does not speak terribly well for those detailed and sometimes overly rigid standards, which reflect in general the European approach to labor law, which is now becoming increasingly recognized as one of the reasons for the failure of Europe to generate the vast number of jobs that are required to deal with their unemployed, as the United States has done.

Consequently, the business community is concerned that instituting the reexamination of ILO convention procedures under article 5, ratification of Convention No. 144 would create a presumption that it will be possible to alter Federal and State legislation by treaty rather than through the normal legislative process.

As I will discuss later, this is why the business community is so concerned about establishing agreed groundrules on the implementation of Convention No. 144.

In addition, despite the TAPILS findings that Convention No. 144 is not at variance with U.S. law and practice, the business community has been very concerned that ratifying No. 144, by ending the longstanding U.S. practice of not ratifying nonmaritime conventions, would send the wrong signal to other member countries of the ILO.

Because ratification of Convention No. 144, as has been mentioned here, has great symbolic importance, not only in this country but in the ILO community as a whole. Consequently, the business community thinks that it would be a mistake to agree to ratify such an important convention without publicly explaining the basis, in other words, the ground rules by which the other conventions would be examined for ratification.

Not to do so might subject this country to greater pressure to ratify other ILO conventions, especially cornerstone conventions, such as Conventions Nos. 87 and 98, which do present problems of different U.S. statutory standards or questions of Federal-State jurisdiction, and to additional criticism in the international arena if we fall to do so.

Until that October 17, 1985, meeting of the President's Committee on the ILO, there had been no agreement by the concerned executive branch agencies, the U.S. Council acting on behalf of the business community and the AFL-CIO, on the groundrules by which the tripartite examination of ILO conventions would take place under Article 5(1)(c) of Convention No. 144, or the circumstances under which U.S. law would be altered in order to conform to the requirements of ILO conventions.

I argued at that meeting that such an agreement was necessary, if there were going to be any basis for removal of U.S. employer opposition to Convention No. 144.

I pointed out that ratification of Convention No. 144 launched an open-ended process to consider a large number of ILO conventions for ratification, and that employers were particularly concerned that ILO conventions would be used as a mechanism to amend U.S. law rather than through the normal legislative process involving both the House of Representatives and the Senate.

I also requested at that meeting that the ground rules be included as understandings to the ratification instrument as a means of explaining to other ILO member countries the basis for implementation of Convention No. 144 by the United States.

As reflected in Secretary of Labor Brock's executive branch letter to Secretary of State Shultz, recommending ratification of Convention No. 144, after thorough discussion by the President's committee, a unanimous agreement was reached by its members regarding the rules that would govern the review of ILO convention.

I do not need to repeat them. They have been read by every previous speaker. You have then in my written testimony. But they are frightfully important to us. That is the thrust of my testimony, Senator.

The President's committee did not agree with the employer position that the ground rules should be included as understandings.

Subsequent to the October 17, 1985, meeting, I took the results of our discussion and the agreed ground rules to the U.S. Council's Industrial Relations Committee, which after extensive, and I must say heated, debate, decided that the U.S. Council would not oppose ratification of Convention No. 144.

These ground rules are an essential prerequisite to ratification and implementation of Convention No. 144. They assure that the examination process provided for under No. 144 will not be used to amend U.S. law and practice.

They also signal that the U.S. examination of other ILO conventions will be done in an orderly and deliberate fashion. It is important to emphasize that these ground rules will govern implementation of the convention by the United States. And therefore their life is as long as U.S. adherence to the convention.

In other words these ground rules will outlast changes in administrations, Congress, and the leadership of the AFL-CIO and the U.S. Council. To that end, we in the U.S. Council would have preferred that these ground rules be included as understandings to Convention No. 144, and so communicated to the ILO.

We believe it is essential somehow to record the agreement on the ground rules in an appropriate formal manner. At the very least, the ground rules should be recorded in the committee's report to the full Senate.

That conclude my testimony. I will be glad to answer any questions.

Senator MOYNIHAN. Mr. Ambassador, we thank you very much. And I think I am beginning to get this clearer.

This committee is not as familiar with all of these things as it ought to be. The last time we really did anything in this regard was in 1935. And so I think I have it. Mr. Kirkland referred to the same three rules that would govern the review. That is something you have agreed on.

You would like us to record the agreement on ground rules in some appropriate formal manner, at the very least in the committee's report to the full Senate.

Mr. KATZ. At the very least.

Senator MOYNIHAN. That certainly is doable. We all agree that, with respect to the possibility of further conventions coming along, they come along as treaties, and the two-thirds rule obtains.

And if they were to come along in the aftermath of Convention No. 144, the Senate Committee on Foreign Relations report would be entirely public. We are going through an argument right now on the ABM Treaty and whether rules obtained that we did not know about. But hearings on these conventions will be very open and public.

Convention No. 144 has great symbolic importance to the ILO community.

Mr. KATZ. It certainly has.

Senator MOYNIHAN. What does it mean to them? Meaning what? Help me on that.

Mr. KATZ. Convention No. 144, its symbolic importance to the ILO is that it sets forth the need to have a tripartite mechanism.

And tripartism, as you well know, Senator, is the crux of the ILO. And incidentally, it is a convention that, as has been mentioned, the Soviet Union and other Communist countries have not been able to ratify.

Senator MOYNIHAN. The Soviet Union may not have ratified that convention, but the Soviet Union is a member of the ILO, the preamble of which declares the member's recognition of the principle of freedom of association. They should have though about that when they signed it.

Mr. KATZ. Well, I am not going to defend the Soviet Union's adherence or living up to the principals of the ILO. but yes, they adhere to a good many conventions, I think quite cynically.

But curiously, this convention, because it provides for a tripartite mechanism, is particularly difficult for them to adhere to, because either you have a tripartite mechanism of business, labor, and government, or you do not.

This is a convention in which the results are obvious. We have the President's committee, TAPILS, the entire machinery, and therefore we are already in compliance. It will be very difficult for the Soviet Union to get into compliance eventually. That does not mean that they may not get there at some stage. But right now, they cannot.

Now, I would like to stress also that tripartism is not only a question of a fundamental principal that assures workers' rights around the world, Senator. There is also, as has been mentioned casually, a question of employer——

Senator MOYNIHAN. Employers have rights.

Mr. KATZ. That is right. And the tripartite mechanism in the ILO has been particulary effective in drawing attention to the spurious nature of the so-called business organization of Nicaragua.

It has protested the arbitrary arrest of the heads of the employer organization in Panama. And in other——

Senator MOYNIHAN. Would that be just recently?

Mr. KATZ. Just recently. And in other cases——

Senator MOYNIHAN. But Panama, they are our friends.

Mr. KATZ. Yes.

Senator MOYNIHAN. Allies.

Mr. KATZ. Yes.

Senator MOYNIHAN. Which all works against that expansion of dangerous influences.

Mr. KATZ. From the point of view of freedom of association, I simply want to stress that it is important to get across the notion of free business association as well as free labor unions.

Senator MOYNIHAN. Watch yourself, Ambassador. You may not get reappointed. But you are welcome before this committee.

It could not be more clear that tripartite means tripartite. And this is not just, it is an international labor organization. But the rights of employers are just as easily trampled in certain situations in the world, not envisaged much in 1919. The 20th century was not envisaged much in 1919.

And as an Englishman has recently written, anybody who has known what the 20th century was going to be like would never have entered it. But that is just as much a reality as that of labor organizations being suppressed.

Could I ask, Mr. Potter, it was your paper on the freedom of association?

Mr. POTTER. Yes, sir.

Senator MOYNIHAN. That is a nice point, No. 1, that with respect to Convention Nos. 87 and 98, ratification would alter a fundamental principal of U.S. labor law that makes union rights derivative from those of employees by subordinating employees rights to those of labor organizations.

Do you want to help a bit on that? Because I think you are on to something that it would be useful to know.

Mr. POTTER. There really is a key conceptual difference between the way the National Labor Relations Act was developed versus Convention Nos. 87 and 98.

Senator MOYNIHAN. We are talking about Europe and the United States.

Mr. POTTER. That is right. The National Labor Relations Act, as most of our labor legislation, are individual rights statutes, in other words they create rights for employers to do something.

Senator MOYNIHAN. Employees may band together to bargain collectively.

Mr. POTTER. Or under title VII, to initiate an employment discrimination lawsuit against an employer for discrimination. They have individual rights.

The ILO, being a tripartite organization, and in particular trying to further the development of worker organizations primarily, although it also does it for employer organizations as well, places the emphasis on the organization. And from the organization individual rights flow. It is backward.

Mr. KATZ. That it the European conception.

Senator MOYNIHAN. It is the other way around. What do you have there? This is not getting beyond our purposes here.

The European law would be more friendly to the notions of the autonomus existence of organizations, of states that have rights, as guilds had rights, and the members of the guild derived their rights from the rights of the guild.

Is it something like that? I see some nodding here. Am I getting that wrong?

Mr. POTTER. That is correct.

Mr. KATZ. I think that is correct. That is the philosophical origin of where they are today in Europe.

Senator MOYNIHAN. That you are an estate of the realm, and rights attain to that estate. Individuals in that estate attain their rights from the estate's rights.

We have a different constitutional history, and we have difficulties accepting the notion of collectives. It is kind of a Puritan problem. There is you and there is God, that is all. Nothing in between. There is no mediating institution.

I can see that, I can see that being a real problem. And yet we have since 1934 belonged to the ILO, and the consequences have not been turbulent.

Mr. KATZ. I do not have the detailed historical background that you do, Senator, in the ILO. And I fervently hope that someday I will be able to read up on this fascinating history.

But in general, if I can make a few generalizations. The vast body of standards that has been referred to before, international legislation, was very, on the whole, useful in propagating the notion of workers' rights, not only in Europe but throughout the world.

And it was based essentially on the European concept of labor legislation. The notion, as you know well, was to avoid world revolution this was the original idea, by raising the level of the workers around the world.

And in general, it has been very, very successful in doing so. But over the years, this body of labor standards has become increasingly detailed, increasingly complex, increasingly rigid.

And I would say that there is a growing realization around the world that the needs of job creation, the needs of employment growth, are becoming as important as the need of assuring workers' rights.

And within the ILO itself today, there is a ferment about the need for greater flexibility, some consolidation, and a good deal of careful reexamination of the whole body of international labor legislation.

We just finished a 3-year exercise in reviewing labor standards. And the employers as a group very forcefully made this position clear. They were supported by a number of Western governments, including our own.

They were also supported by quite a few of the developing countries. Remember the ILO now has a preponderance of developing countries. And these countries find that this body of labor legislation is overly rigid and overly complex, and does not really answer the problem of employment growth and disguised unemployment in their countries.

But it is extremely difficult to move rapidly in an organization such as the ILO, where this body of legislation has grown up carefully over the years, and to which, especially the labor movements of Western Europe, are very, very committed.

What does this imply for us? It implies two things. One, to move with extreme caution and great care in examining existing ILO conventions, as far as U.S. labor law and practice is concerned.

The U.S. Council, on behalf of the business community, keeps Ed Potter working a good part of his time examining some of these conventions that sound innocuous, but may have all sorts of problems.

For example, forced labor. Ed has been working on the forced labor convention for some time now. No definite conclusion has been reached by TAPILS. But we have already identified some 20 issues that need further examination.

Senator MOYNIHAN. Can I say two things? I agree with everything you have said.

I would like to make a point about the origins of the ILO. You might as well know that my doctoral dissertation was written on how the United States came to join the ILO. And the only person who knows more about this that I do is my poor wife, who was forced to read the dissertation, pregnant at the time. She kept falling asleep.

And whenever we have domestic difficulties, as people will do after one-third of a century, I said, "Yes, but you fell asleep reading my dissertation, did you not?" After I have not shoveled the walk or something, I can always bring this matter up.

The idea that the ILO was established with the prospect of world revolution in mind would be quite wrong. The import of the Bolshevik overthrow of the Kerensky goverment had not really sunk in.

The ILO was the answer to a long demand, much developed by the European trade union movement, that said the problems of competition between countries inhibited the adoption of labor legislation of a perfectly ordinary, useful kind.

If France did it, then Germany would have a competitive advantage selling to England. And it is something the EEC today is working at all the time. And it had to do with sulfur matches. Who will abolish them?

The United States actually passed a law in 1905, in response to a treaty. There were labor treaties being negotiated in Europe, as Mr. Potter knows, that said, we will all agree, nobody will produce sulfur matches, because children would eat the tips and die.

They were cheaper than the other kind, but there was another kind. So we will all agree at one moment, right here and now, none of us will make them, then none of us will have any advantage over the others.

These labor treaties were probably not a very powerful idea. That is not really the way things worked. But people thought it was. And they did not do any great harm.

The ILO was a place where labor treaties would be negotiated with more rapidity and order and effect. It was no more than having uniform legislation across the United States.

It is the postwar period that the ILO has been involved in the whole question of who would prevail in the great ideological conflicts of the age. During this period, the fact of a free trade union movement was a political fact of enormous consequences.

During the early part of the century, all countries had free trade union movements. All, without exception.

And the idea that you would not have a free trade union movement was a curious one. Why would you not? What is wrong with it? That came after.

In any event, I see you telling this committee that the business group in the ILO is willing to have this convention, with some understanding. You have spelled them out here, and that is why you are here. Is that right?

Mr. KATZ. Mr. Chairman, yes. And we would also like very much somehow to signal not only that this is an understanding as to how we are going to proceed here, but we think it is important also to signal publicly that these understandings exist.

Because one of the bases for objection in the business community has been the fear that there will be increasing political pressure from other countries on us, like, well, you have ratified No. 144 and now we expect three more conventions next year.

And that is why we though that if we somehow could transmit these three understandings so that others are aware that this is how we will proceed, we will be able to head off the kind of pressure.

Senator MOYNIHAN. I get you. I want to say to you, I think you are proper to be prudent. But do not be too prudent.

It is very hard to ratify a treaty. We have treaties stacked up in the back. Would you like to see our treaty room? We have about nine treaties on arms control that go back to President Johnson. We do not get around to them very often.

But I am very much interested that the energy of an attorney of Mr. Potter's capacity would be working on the forced labor thing. I would like to hear more about that. This is the first we have seen of you in one-third of a century.

We hope it will not be one-third of a century before we see you again. Thank you gentlemen very much. Thank you, Mr. Ambassador, in particular.

[The prepared statement of Mr. Katz appears at p. 97.]

Senator MOYNIHAN. Now, speaking for Mr. Whitehead, who had meant to be here on this occasion, Mr. Anthony Freeman, who is a Special Assistant to the Secretary of State and the Coordinator for International Labor Affairs. Mr. Freeman, we welcome you, and we will put your statement in the record as if read.

And perhaps, sir, you could summarize your statement, and then tell us what you think of the testimony that you have been hearing.

STATEMENT OF ANTHONY G. FREEMAN, SPECIAL ASSISTANT TO THE SECRETARY OF STATE, AND COORDINATOR, INTERNATIONAL LABOR AFFAIRS, DEPARTMENT OF STATE

Mr. **FREEMAN**. Thank you, sir. First of all, Secretary Shultz, as you know, is in New York today, and regrets that he could not be here personally to testify.

I have been asked to testify on his behalf, to underscore the importance which we attach to the ratification of these two conventions.

I do not intend to read my statement. I do want though, to make the point that it is our view that it is in the foreign policy interest of the United States that the Senate act expeditiously to permit notification of ILO Convention Nos. 144 and 147.

As has been said here, ratification of Convention No. 144 would represent the end of a three decades old practice, which has undermined our political influence in the ILO of dismissing out of hand any possibility of ratifying any ILO conventions.

The Soviets and their allies are engaged in a permanent effort to subvert the ILO's human rights supervisory machinery. They want to weaken these standardsetting procedures and they want to dismantle its unique tripartite system. Thwarting that assault of the Soviets is our major aim in the ILO.

Unfortunately our record of nonratification of conventions undercuts the credibility of this effort. You have heard the testimony before you, sir, and I am not going to repeat it.

The important thing with regard to No. 144 is that the objections of the business community which were posed did not relate to No. 144 per se on its merits, but to how we proceed with any possible further consideration of ratification of other conventions.

And that has been taken care of now with the reaching of this compromise three-point agreement, which is a kind of insurance policy against any possibility of our moving in the direction of ratification of conventions which in any way conflict with U.S. labor law or practice.

Like Mr. Katz, we would like to see this three-point agreement incorporated in some way in the public record, and we would request at the very least that it be part of the legislative history of the ratification of that convention.

With regard to No. 147, I would just say at this point that there is full agreement among the government, worker, and employer representative who represent the interests of those elements in the ILO to ratify this updated convention concerning minimum standards in merchant ships.

Existing U.S. legislation, regulations, and industry practice are already in full compliance with respect to the working and living conditions of seafarers.

Thank you, sir. I am open to any questions you may wish to pose.

[The prepared statement of Anthony Freeman appears at p. 107.]

Senator **MOYNIHAN**. Yes, sir. And would you give my personal regards to the Secretary, who, of course, first appeared in Washington as the Secretary of Labor. I served in the Cabinet with him in those days, and I know of his interest in the ILO.

What I want to know, and what the other members of the committee will want to know, is this: The President has not sent the ILO treaties to us in the routine of things. This is a large decision that the Government has made to break out of a period of inaction, to overcome the disadvantage.

As Mr. Kirkland and Ambassador Katz indicated, this means a lot to the ILO community. And you want to start getting active. Is that it? Our activities in the ILO, the kinds of things you mentioned, would be useful as we resist initiatives from totalitarian governments, and as we launch initiatives in the other direction. Do we need a little more standing?

Mr. FREEMAN. Yes, sir. As we tried to say, the human rights machinery of the ILO is the essential core element of interest to us in that organization. We call it the human rights supervisory machinery.

That is to say, there are several committees which have the function of reviewing compliance by member states of their obligations under ILO conventions.

That includes compliance with the basic human rights conventions such as No. 87, freedom of association, No. 98, the right to collective bargaining, No. 105, forced labor, No. 111, discrimination in employment, and so forth.

We have been seeking and we have been rather successful in recent years, to begin to employ this machinery against those countries which are not in compliance with the human rights conventions. And I am speaking specifically here of the Soviet Union and other East bloc countries.

The Soviet Union's response to that has been a camaign of several years now, to undermine, to seek to destroy, to emasculate, to dismantle the supervisory machinery.

Our ability to withstand this Soviet assault against the basic core purpose for which we are in the ILO, in our judgment, is being undermined by the fact that the United States, just says, these conventions do not apply to us. It applies to everybody else. You should ratify them, but we cannot and won't even try.

Technically, we, for example, cannot at the present time introduce a case ourselves against a country which violates those conventions in the supervisory machinery, because we are not a party to them. So we have to resort to our allies to do this for us.

So a good deal of our activity right now, and we have been fairly successful at it, is in getting our allies to present cases, getting the workers to present cases, getting employers to present cases against those countries that violate the basic human rights conventions of the ILO.

We have one hand tied behind our back because we have said rather high-handedly, "Sorry, but we do not ratify conventions in the United States."

Senator MOYNIHAN. Mr. Hickey is nodding agreement in the back.

This treaty compliance mechanism only gives standing for complaints to nations which are party to the convention about which a complaint is being made.

Mr. FREEMAN. Technically, we have standing in the committees that are part of the supervisory machinery, and we do speak up.

But we have found that it is very difficult for us to present a case, to act as a prosecutor ourselves, when we have not ratified these conventions.

Senator **MOYNIHAN**. That is clear. Other nations may argue if this is such an important thing, why are you not a party to it?

So you are on the move here. This is an idea to go beyond where we have been.

Mr. **FREEMAN**. We want to move but we want to move very carefully and very prudentity, as you said.

Senator **MOYNIHAN**. But, you think that compliance machinery is important, and the adoption to No. 144 and the other would make it possible to use the ILO more effectively than we now do?

Mr. **FREEMAN**. As has been said before, No. 144 is a good place to start, because it has symbolic importance and yet it is a rather simple convention.

All it says is that member states hich ratify this convention should set up some sort of tripartite mechanism for dealing with ILO questions. We already, have that mechanism in place.

Senator **MOYNIHAN**. You have it in the TAPILS.

Mr. **FREEMAN**. You have it in the President's Committee on the ILO, and the subordinate bodies of that organization, one of which is TAPILS.

Senator **MOYNIHAN**. No new letterhead need be printed.

Mr. **FREEMAN**. Absolutely not.

Senator **MOYNIHAN**. We can send this to the floor of the Senate and say we have in place the provisions which we undertake to put in place by the convention.

Mr. **FREEMAN**. Absolutely.

Senator **MOYNIHAN**. That is very clear, and you are speaking for the Secretary of State on that matter.

And you are telling us that the Secretary of State feels that it is in the national interest to adopt these two conventions?

Mr. **FREEMAN**. That is correct, sir.

Senator **MOYNIHAN**. I do not think we should elaborate any further. Do you? I mean, that is a very clear statement.

Would you take back to the Department, Mr. Freeman, that this committee will take this matter with great seriousness.

Mr. **FREEMAN**. I would also like to take back, with your permission, sir, your interest which you stated earlier in seeing Convention No. 87, freedom of association, in the Vice President's briefing book.

I would like to assure you, it is there. I spend a good part of my time making sure that the concepts of "freedom of association" and "trade union pluralism" get into the briefing books of all of our principals who have been traveling to Poland in an attempt to normalize relations.

Senator **MOYNIHAN**. Fine. So, when the Vice President of the United States was going off to Poland and was going to be meeting with government officials and confronting these issues, he took with him in his briefing book a statement that Poland has committed itself to Convention No. 87 and is not keeping it.

Mr. **FREEMAN**. That is absolutely right. And it is our job, sir, I must say, and one of the more important accomplishments of the

ILO, and it has proven itself, that there has been a condemnation of Poland by the ILO.

There has been the commission of inquiry report of 1984, which is an absolute condemnation of the violation of trade union rights in that country. As a result of that report, the Poles left in a huff and walked out, and gave notice of their intention to withdraw from the ILO in a 2-year period, which is the legal period for notification.

They have now extended that period for a third year. The third year ends in November. They are probably going to come back. My assumption is that they are.

If they come back, it is our job to make sure that the ILO does everything within its own mandate and rules and constitution to enforce accountability upon the Poles, by way of the supervisory machinery.

And that is why we want to have our house in good order as we attempt to do that.

Senator MOYNIHAN. It could not be more clear, and it could not be more agreeable to this member, this very junior member of this committee, I should say.

But I thank you very much, sir. And I appreciate both those statements. This is not a pro forma hearing in any sense. This is a very serious matter, and we will take it as such. Thank you again, sir.

We are now going to hear a panel on Convention No. 147. We have representatives of the Seafarers International, the National Marine Engineers' Beneficial Association, and the AFL-CIO Maritime Committee. Mr. Pecquex. Is that French-Canadian?

Mr. PECQUEX. Yes. My Acadian relatives, instead of going down to Louisiana, stopped in South Brooklyn, and that is as far as they got.

Senator MOYNIHAN. And Mr. Landgrebe, we welcome you, sir. And of course, Mr. Simpkins.

Gentlemen, I am going to have to say, we are going to have to keep this to a 25-minute period. We went longer because we had the other people.

The rules of the Senate do not allow us to meet after 7 minutes, but no one ever catches up to you until 20 minutes after the hour. So proceed, sir. All of your statements will be put in the record as if read.

STATEMENT OF FRANK PECQUEX, LEGISLATIVE DIRECTOR, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, CAMP SPRINGS, MD

Mr. PECQUEX. Senator, I would like to read a summary of it and make some additional remarks.

Senator MOYNIHAN. Please do.

Mr. PECQUEX. I am Frank Pecquex, Legislative Director of the Seafarers International Union of North America and the Maritime Trades Department, AFL-CIO.

I am representing Frank Drozak today, who you invited to testify at this hearing, but is unfortunately unable to make the hearing. But he has an eager interest in seeing this convention adopted.

The SIU welcomes ratification of ILO Convention No. 147, since it constitutes an acceptable, albeit minimal, international standard for employment of seafarers on vessels engaged in maritime transport.

The need for an international instrument on the maintenance of minimum standards on vessels cannot be disputed.

Worldwide cases of abuse and criminal activity by unscrupulous shipowners, who engage seafarers from countries with subsistence economies at very low wage rates and few other social advantages, are widespread.

Costsavings achieved by ignoring standards at sea is a certain formula for human misery, unreliable crews, and lost ships. Well-trained professionals will not accept such conditions of employment.

That is the reason that most substandard vessels, or vessels under fly-by-night registries, are often manned by unskilled, poverty-stricken nationals of developing countries for whom a job at sea appears to represent a chance for betterment, but which in fact often represents further impoverishment.

The close relationship between safety at sea and conditions of employment cannot be underestimated. Vessels registered under traditional maritime flags have lower loss rates because of higher training standards and government-enforced operating regulations.

The stark contrast between the limited losses among the traditional maritime nations with high manning and safety standards and acceptable conditions of employment and the high loss record of convenience registries with no crew restrictions and little or no safety and training enforcement is perhaps the most compelling reason for ratification of minimal international standards, as found in ILO Convention No. 147.

The SIU believes that the element of port-state control, contained in article 4 of the convention, is indeed a focal point of this convention and one with which the SIU is in agreement. Without such a vehicle for enforcement, the SIU believes that the convention would be meaningless.

In closing, ratification of this convention should logically place the full weight of the U.S. Government behind the maritime labor movement's efforts to facilitate improved conditions on merchant vessels, regardless of flag of registry.

Hopefully, through active cooperation of the Government, it will result in an end to cases such as one SIU representatives encountered a few years ago in California, where while operating under an ITF, and that is the International Transport Workers Federation program to minimal shipboard standards, they boarded a vessel to find a crew forced to survive on a minimal subsistence diet, which included as a staple any seagulls they were fortunate enough to catch.

While this may represent an extreme case of substandard conditions, there are many other ships operated today by crews who experience standards far below the minimal standards recommended by this and other ILO conventions.

I would also like to associate the Seafarers International Union with the remarks of Lane Kirkland, and others, about the ridicule to which we are subjected in the international community over the lack of adoption of ILO conventions.

And while some may applaud the return of the United States to the ILO, they seem to point only to our level of funding and appointment of Americans to key ILO positions as a mark of our success.

We believe, however, that while this resumption of U.S. participation in international labor affairs may win the minds of some ILO officials, it is essential, if we are going to be successful in our efforts, to win the hearts of the people those officials represent.

To achieve this noteworthy goal, we must go beyond a resumption of funding, and go to the ratification and enforcement of ILO conventions. Then and only then will we serve as a beneficial role model for the international community.

Senator, that concludes our remarks, and we stand ready to answer any questions.

[The prepared statement of Frank Drozak appears at p. 118.]

Senator MOYNIHAN. They were powerful remarks. Give the committee's remarks to Mr. Drozak.

What are some of the flags that you had mentioned as fly-by-night?

Mr. PECQUEX. There are a whole host of new registries that have come up, the Isle of Wight, Vanitu, I believe, is the pronunciation. And certainly there still remain problems of some of the older flags of convenience.

Certainly there have been some improvements, the Panama, Liberian, and Honduras registries, there have been improvements made over the years. There are still a significant number of cases under those flags-of-convenience registries that must be addressed.

Senator MOYNIHAN. Thank you. Mr. Landgrebe.

STATEMENT OF KARL LANDGREBE, SPECIAL ASSISTANT TO THE PRESIDENT, NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

Mr. LANDGREBE. Mr. Chairman, My name is Karl Landgrebe and I am a special assistant to Mr. C.E. DeFries, president of the National Marine Engineer's Beneficial Association.

Mr. DeFries is unable to appear today, with regret. So on his behalf I would like to offer these brief comments on efforts to ratify the ILO Convention No. 147, concerning minimum standards on merchant ships.

In his letter of transmittal to the Senate, the president recommended the convention's ratification, noting that it would be in the national interest, and in the interest of the world community as a whole.

With this in mind, I would like to extend NMEBA's support for ratification of Convention No. 147, and add that Senate support on such a basic issue as decent and safe working conditions for seamen worldwide is more than justified.

Working conditions for American seaman sailing aboard U.S.-flag vessels are probably the best in the world, partly due to American labor laws, and partly a result of collective bargaining agreements between management and labor.

But as members of a worldwide community of seaman, we support the convention's ratification as an expression of our concern that many of our counterparts sailing aboard some flag-of-convenience and foreign-flag vessels are not so lucky.

In fact, many routine accommodations we easily take for granted on our vessels, nutritious food, proper recreation, sleeping and health care facilities, are impossible to find in some foreign ship operations.

Additionally, the long-term benefits or our shipboard labor, social security, decent pay, and health and unemployment insurance, are unknown to many workers on foreign-flag vessles.

Although more certainly can be done, this convention is a useful start toward addressing many of these inequities. Briefly, I would like to comment on specific provisions of the convention that we think could have the strongest impact on treatment of merchant seamen onboard.

Article 2, dealing with minimum standards onboard vessels, mandates that signatory states become involved in the quality of life of seamen aboard their national flag vessels.

Each state is required to have laws and regulations covering: One, vessel safety standards for protecting life aboard ships; two, appropriate social security measures; and three, shipboard conditions of employment and living arrangements not adequately covered by collective-bargaining agreements.

Additionally, these laws and regulations must be substantially equivalent to the ILO convention on minimal age for seamen, shipowner liability, medical examinations, officers' competency, food and catering accommodations, seaman's repatriation, accident prevention, and worker representation, for example.

More importantly, however, each state is required to exercise effective jurisdicion over nationally flagged vessels on safety, social security, and shipboard conditions.

On shipboard matters over which the state has no effective jurisdiction, each state must satisfy itself that these issues are addressed through collective bargaining, or on the basis of freedom of associaiton.

We are pleased that the convention requires that ratifying states to ensure that adequate grievance procedures exist for the investigation of hiring complaints involving national seamen on ships registered in foreign countries.

Equally important is the required existence of procedures to report such complaints to the proper government authorities in the country in which the hiring vessel is registered.

Article 3 directs a ratifying state to advise nationals of possible problems of signing onboard a ship registered in a state which has not ratified the convention, or does not have equivalent standards.

This provision could prevent noncomplying operators from employing seamen who would not want to work on a vessel that is not in compliance with the basic standards, as set forth in the convention.

As you know, and as complaints against Liberian-flag vessels last year indicated, guaranteeing compliance by signatory states, much less by individual operators, is difficult.

We are, however, somewhat heartened by the port controls mandated under article 4, that would allow port states to report complaints of substandard conditions on visiting vessels to the state in which the vessel is registered.

Senator MOYNIHAN. They would report where?

Mr. LANDGREBE. They would report to the state where the vessel was registered.

Senator MOYNIHAN. I see.

Mr. LANDGREBE. Wisely, the port state may also take measures necessary to rectify any conditions onboard, which are clearly hazardous to safety and health.

Along with a copy of the convention, the president submitted to the Senate a certified copy of Recommendation No. 155, which provides guidelines for ILO members who wish to implement additional standards for vessels covered under the convention.

Senator MOYNIHAN. Your text says No. 147. You meant No. 155?

Mr. LANDGREBE. It should read No. 155.

Senator MOYNIHAN. All right. It will be so corrected in the record.

Mr. LANDGREBE. While the president requested no specific action on recommendations, since its guidelines are consistent with existing U.S. law, we believe that the recommendations could be useful to those nations that have not come as far as the U.S. on labor issues relevant to merchant seamen and citizens as a whole.

In conclusion, we hope that Senate ratification of the convention is forthcoming. Perhaps with the United States as a role model, countries around the world will be encouraged to support and protect the health, welfare, and well-being of their merchant seamen. Thank you.

Senator MOYNIHAN. We thank you. And now Mr. Simpkins.

STATEMENT OF TALMAGE E. SIMPKINS, EXECUTIVE DIRECTOR, AFL-CIO MARITIME COMMITTEE

Mr. SIMPKINS. Mr. Chairman, I am Talmage Simpkins. I am the executive director of the AFL-CIO Maritime Committee.

Mr. Chairman, the adoption by the United States of ILO Convention No. 147 would represent a quantum step forward in seeking redress of the many abuses inflicted on seamen the world over. The significance of that is mind-boggling. Here we are in the latter part of the 20th century asking the governments of the world to adhere to an international convention which only extends the most basic and rudimentary standards to seamen. Mr. Chairman, these are not statements of criticism, but rather ones of frustration.

Today, 80 percent of all unlicensed seamen on merchant ships of the world are from Asia, primarily Southeast Asia. This is not because they are the best seamen—far from it—but because they are more susceptible to abuses.

An increasing number of flag-of-convenience countries are coming into being. This is followed by existing flag-of-convenience countries lowering their registration fees, which means a lessening of their meager standards, and the traditional maritime nations that have maintained fleets with decent social standards are getting out of the business.

These flags of convenience are also referred to as "runways" meaning that the shipowners, by registering in one of these countries, are runing away from, among other things, minimum safety standards, decent working conditions, and most importantly, any degree of governmental ability or desire to impose national or international regulations.

Last year I visited the Philippines in an effort to substantiate for myself some of the glaring abuses that are being inflicted upon Filipino seamen. There are many. Seamen are being bought. The price is cheap. The outlay is often recouped in the first month. Seamen sign blank contracts. Much of their meager wages are taken back by overcharging on transportation or withholding wages if they are fired for any cause, real or imaginary. International minimums are bypassed by the simple method of having the seamen sign two sets of articles—one specifying the International mimimum and the other indicating what they will really be paid. These common practices occur all too often and are but a few examples of the total picture and they are not only limited to Filipino seamen.

We are not suggesting that all of these abuses will be stopped by the ratification of this convention by the United States. The authority extended by article 4, which specifies some degree of port control, should help.

If you accept the fact that self-policing is a farce, which we do, you also have to recognize the the engagement of a so-called independent policing agency, totally beholden to the company being policed, is also a farce. Worse yet is the situation where the open-registry countries permit their officials, who are supposed to be regulating the "runways" under their flag, to be led around by the "runway" operators. It is our opinion that before you can have any meaningful scheme to protect the workers, the law developed to do so has to provide for an input from those being protected—in this case, the foreign seamen on the ships. To a degree, ILO Convention No. 147 does this.

In conclusion, Mr. Chairman, we ask that your committee recommend to the Senate ratification of ILO Convention No. 147 concerning minimum standards in merchant ships—Treaty Doc. 99-21.

Thank you.

Senator MOYNIHAN. Thank you very much, Mr. Simpkins. Let me ask the panel a question, because I know our committee will want to know more about this.

Mr. Simpkins says that 80 percent of all unlicensed seamen on merchant ships of the world are from Asia.

Now, what is an unlicensed seaman?

Mr. SIMPKINS. He would be an A.B., an ordinary. He would be a cook or, he would be a steward onboard a vessel. He would not hold a license in the deck or engine department although he may work in the deck and engine department. But he does not have a certificate.

Senator MOYNIHAN. Oh, I see. You distinguish between licensed crew and unlicensed crew. Is that it?

Mr. PECQUEX. A similar thing is supervisory and nonsupervisory personnel, and unlicensed seamen would fall into the latter category, with the licensed officers basically being your supervisors aboard the vessel.

Senator MOYNIHAN. Well, this is a very powerful number here. You mean that a wiper in the engine room is liklely to be unlicensed?

Mr. SIMPKINS. Oh, yes, he is.

Senator MOYNIHAN. Well, what members of the Seafarers, are they by definition licensed?

Mr. PECQUEX. We are unlicensed seamen also. The same as the National Maritime Union.

Between our two unions we represent, I would assume, probably close to 100 percent of all unlicensed seamen in the United States.

Senator MOYNIHAN. But 80 percent of all unlicensed seamen at sea are from Asia now.

Mr. PECQUEX. That is correct.

Senator MOYNIHAN. These are not tramp steamers? Not to denigrate a tramp, which is simply an unscheduled ship. These are aboard modern ships?

Mr. SIMPKINS. They could be tankers. They could be liner vessels. Or a good many of the 50,000 jobs on the 50 to 80 foreign-flag passenger ships permanently based in the States, employ these people also.

Senator MOYNIHAN. When I see that beautiful, that gorgeous white thing on the North River piers, the galley and the wipers and the swabbers will be Asian now.

Mr. SIMPKINS. A good number of them will be, yes. Or are.

Mr. PECQUEX. They are also aboard a number of U.S.-flag vessels that are operating in the Persian Gulf right now.

Senator MOYNIHAN. And Vanitu has entered the list, along with Honduras. We have been trying to find out just where Vanitu is. We had an Ambassador sent out there, and he could not find it either.

I think we owe you fellows this convention. I think it is very typical of the American labor movement, and the AFL–CIO, that you were in here talking about the conditions of people you do not know and have not met and are not your own countrymen.

But they go to see with the rest of you, and you are concerned about their welfare. That is very handsome of you.

Mr. PECQUEX. If I could add just one closing comment, Senator.

It is not so much the skill level of the Asian seamen we are concerned about. Certainly with proper training they can match any seamen in the world. It is more the conditions under which they must work, and that is the thing we object to.

Senator MOYNIHAN. Those are conditions you fellows once worked under, before you had a union. Mind you, under sailor conditions were by definition going to be awful anyway, I think. But it does not have to be as awful as they were.

I see that magic moment of 12:15 arriving, when somebody will be standing up on the floor and pointing out that we have been in violation of Senate rules for 15 minutes, and therefore I think the committee ought not to do that, unless it has to.

There is a general tolerance up to this time. And so I will have to bring this hearing to a close, with a statement that I believe it was an exceptionally important hearing. We have not had anything like it in one-third of a century.

I want to particularly thank you gentlemen who have spoken for the seamen of the world; not your own members at all, but for people who do not know you and do not know you are testifying, who could very well benefit from what we do here.

I hope the committee will take this under advisement shortly. It will do so, and I hope we can get it reported out. If we do we are going to need your help. And I know we will have it, as we had it before.

With that, thanking all our audience that has stayed so patiently for so long, thanking our indefatigable reporter who somehow managed to keep a complete record of this while drinking Diet Coca-Cola, which not everyone can do, I declare the hearing closed, thanking our staff who has been so very helpful throughout.

[Whereupon, at 12:13 p.m., the hearing was adjourned.]

The committee met at 2:05 p.m. in room SD-419, Dirksen Senate Office Building, Hon. Daniel P. Moynihan presiding.

Present: Senator Moynihan.

Senator MOYNIHAN. A very good afternoon to our witnesses and guests.

This is a continuation of the hearing of the Committee on Foreign Relations convened earlier to consider—for the first time in one-third of a century—two international labor conventions. The first is No. 144, which concerns tripartite consultations, and the second is No. 147, which concerns minimum standards on merchant vessels.

In our hearing last time, we were not able to accommodate the National Association of Manufacturers. The omission was wholly and exclusively the result of our having a very limited amount of time. For example, this morning we ran out of time by 11 o'clock. The 2-hour rule can be honored in the breach or otherwise. But the committee can only be in session for 2 hours while the Congress is in session.

We are very happy to have with us Mr. James D. Burge. You say Burge, don't you?

Mr. BURGE. Burge.

Senator MOYNIHAN. Who is corporate vice president of Motorola speaking on behalf of the NAM. And I believe you are accompanied by Mr. Lunnie.

Mr. LUNNIE. Yes.

Senator MOYNIHAN. Mr. Lunnie, we welcome you to the committee.

As I don't have to tell either of you, but as I ought to say for the record, the history of the U.S. involvement with the International Labor Organization, is a very old one. The ILO was the only one of the League of Nations organizations we ever joined. The ILO in the United States has very much involved the National Association of Manufacturers, as well as the U.S. Chamber of Commerce. They represented the business in this tripartite arrangement for one-half century. They represented business just as the AFL and then later

AFL-CIO represent labor, and we still have the same tripartite arrangement.

I think business interests worked out an umbrella organization now to represent your views before the ILO. The direct NAM involvement is no longer there. But you are part of the umbrella organization.

You were present at the creation, Mr. Burge. We welcome you. We'll put your statement in the record as if read, and then you can proceed either to read it or to summarize it or do whatever you wish.

We will first receive an opening statement by Senator Helms.

[Senator Helms' opening statement follows:]

OPENING STATEMENT OF SENATOR HELMS

Mr. Chairman, I want to thank you for holding this special hearing this afternoon. As I remarked 3 weeks ago, you have always been fairminded in dealing with other parties, and this hearing demonstrates not only your continuing interest in this subject, but your evenhanded treatment of all parties concerned. I commend you for it.

I also want to welcome the witness, Mr. James D. Burge, who is corporate vice president of the Motorola Co. from the Chicago area, and who is representing the National Association of Manufacturers. As I understand it, you have a number of concerns about ILO Convention No. 144, the convention concerning tripartite consultations on the ILO process.

I am particularly concerned with Article 5(c)1 of Convention No. 144 which calls for consultations on the reexamination of unratified ILO conventions. The reexamination is to deal with measures which might be taken to secure ratificiation of conventions that the Senate has refused to approve. I have a problem with this.

A treaty is either voted upon or not voted upon. It is either approved or rejected, or, in some instances, tabled. If a convention is rejected, then it should not be brought up again. Otherwise we are going to have the same interpretation problems and constitutional difficulties that some of my distinguished colleagues on this committee have sought to inflict upon the 1972 ABM Treaty. Frankly, I do not like the idea of periodic reviews of unratified treaties to reopen a ratification process.

I certainly am interested to hear about any concerns of the business community with respect to ILO Convention No. 144. Given the gyrations of the stock market during the past few days, and the continuing controversy over the trade bill, I do not want the business community to become upset over a convention that has been kicking around for a long time and carries the possibility of being injurious to U.S. economic interests. On the other hand, if this convention is not injurious to U.S. trade and commerce, then if it furthers the U.S. national interest, I would support it.

With respect to Convention No. 147, the Department of Labor assures me that the agreement establishes minimum standards of safety, improved shipboard conditions of employment, and certain social security measures for merchant ships. I realize this convention is designed to deal with substandard safety and health conditions aboard merchant vessels. If this applies to all nations, then according to the Secretary of Labor, Convention No. 147 "will help save the lives of seafarers, reduce cargo losses for the shipping industry, and protect coastal and port States from the costs of marine casualties."

Obviously, our witness today has a different view of administration claims on behalf of Convention No. 147, and I look forward to hearing what that view is, and what are the concerns of the witness about this convention.

STATEMENT OF JAMES D. BURGE, CORPORATE VICE PRESIDENT, MOTOROLA, INC., SCHAUMBURG, IL, ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS, ACCOMPANIED BY PETE LUNNIE, DIRECTOR OF LABOR RELATIONS, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. BURGE. I appreciate the opportunity at this special session. And I know that you have got a busy day, so we will move right into it.

I am James Burge. I am the corporate vice president of Motorola. And I appear before you this afternoon on behalf of the National Association of Manufacturers as a member of its labor relations committee and subcommittee on multinational labor relations.

As you mentioned, accompanying me is Pete Lunnie. He is NAM's director of labor relations.

I will just highlight the key points of my testimony, but as you mentioned, we do ask that the entire statement be included in the record.

Senator MOYNIHAN. Yes.

Mr. BURGE. Before proceeding, I should mention that I served as the U.S. employer delegate to the Committee on Employment Promotion and Social Security at this summer's International Labor Conference. And I am returning to Geneva next week to continue work on relevant standards.

So, in addition to representing the broad spectrum of views held by NAM members, my comments also reflect personal experiences and those of my colleagues in working within the ILO framework.

My testimony is directed at Convention No. 144 and the significant reservations I believe that are held by the business community at large concerning its ratification. Convention No. 144 would put the United States in the position of having to consider additional labor standards for potential ratification. This convention does not stand alone, and it is within this context that I wish to review the major reservations that the business community had. The committee's deliberations set the stage as to whether basic U.S. labor law is to be altered in a significant way as a consequence of Convention No. 144's ratification. NAM's reservations are based upon the following three points.

First, ILO conventions are not universally accepted worldwide. Although 162 conventions have been adopted by the ILO since 1919, only 6 of the 158 members states have ratified more than 50 percent of those conventions. And 27 percent, or 121 countries, have ratified fewer than 30 percent of the ILO conventions. And 41 or 26 percent of ILO member states have adopted 9 percent or fewer conventions. This record of ratification hardly supports the characterization that ILO conventions are universally accepted in the context of these hearings or that they constitute internationally recognized worker rights as some have suggested in proposed trade legislation.

Second, ILO conventions in many cases conflict significantly with U.S. labor law and practice. For example, I'm sure you realize two labor standards frequently referred to as "cornerstone conventions," Convention Nos. 87 and 98, address freedom of association, the right to organize and collective bargaining. Ambassador Katz in his testimony earlier this month cited how these conventions fundamentally conflict with U.S. labor law. I want to touch on a few of these conflicts because I think they bear repeating.

These conventions would alter a fundamental principal of U.S. labor law which makes union rights derivative from those of employees by subordinating employee rights to those of labor organizations.

It would broaden the classes of employees entitled to National Labor Relations Act-type protection to include supervisors, agricultural worker, and public employee.

It would repeal the employer free speech provision.

It would limit restrictions on the right to strike, including secondary boycotts, in both the public and private sectors.

And they would impose collective bargaining in some State and local jurisdictions and expand the scope of bargaining in the Federal sector and State and local jurisdictions.

These differences illustrate a problem common to almost all ILO conventions except those dealing with maritime and Convention No. 144. That is, under the Tenth Amendment of the U.S. Constitution ratification of most conventions would require legislative action by the State as well as the Federal Government.

And finally, Convention No. 144 calls for tripartite consultation at the national level. But this process already is in place in the United States in the form of the President's Committee on the ILO. Convention No. 144, however, also calls for review of why a member state such as the United States does not ratify other labor standards. While Convention No. 144 does not conflict with U.S. labor law, others do. And the question has to be asked, "Is it the intention of Congress to ratify Convention No. 144 that could lead to the adoption of others that would alter Federal and State labor law in very basic ways?"

Senator MOYNIHAN. Mr. Burge, if you will forgive me, a vote has been called, and we are now in the second half. So, I am going to have to recess this hearing.

[Recess.]

Senator MOYNIHAN. Mr. Burge, I am sorry that another vote has been called, and I am going to be required to be on the floor. So we are going to have just about 10 minutes of formal session, and we can continue this. Would you go right ahead?

Mr. BURGE. OK.

Senator MOYNIHAN. Perhaps you could finish in about 5 minutes so that we could have some exchange here.

Mr. BURGE. We will try to abbreviate this.

Senator MOYNIHAN. Sorry about this day.

Mr. BURGE. Sometimes you just don't have control.

I listed the major concerns that we have.

A central argument advances in support of adopting conventions is that the lack of ratification has somehow diminished the U.S. effectiveness in the ILO. I can assure you that my associates and I who have had personal experience with the ILO find no reason to believe that the record of the U.S. ratification reduces our ability to influence in any way.

If you look at the record since returning to the ILO in 1980, the United States has had a considerable impact. When we went back, we were very aggressive in implementing many of the things that we felt were appropriate for that organization and have continued to be quite successful in doing that.

Our record of accomplishment with the ILO we believe does not support the contention that ratification is a requisite to the effectiveness of achieving U.S. policy objectives. Our conclusion I believe bolstered when one examines the record of ratification, or more accurately nonratification, of many conventions by a majority of countries. In fact, nonratification, because of potential Federal-State conflicts, has been an acceptable response to my ILO colleagues. I feel that ratification of a single nonmaritime standard would weaken theis argument.

So, in looking at the ratification of ILO Convention No. 144 from a variety of perspectives, we find little benefit accuring to the United States and substantial risk. It is not unreasonable to anticipate increased pressure to adopt cornerstone conventions which, as I have noted earlier, conflict fundamentally with U.S. labor law and practice.

You have received in our written document the NAM position. I won't go over that now in the interest of time. But it is as a result of over a year's study by the members of the National Association of Manufacturers. There are just three key points that I want to underscore that we feel are very important that at a minimum need to be satisfied preceding any ratification of any ILO convention.

One, each convention must be examined on its merits on a tripartite basis. Any further, to determine if there are differences between U.S. Federal and State law and practice and the convention's provisions.

Two, no ILO convention which conflicts with Federal law and practice will be ratified unless and until Federal law and practice is conformed to the convention in advance through the normal legislative process.

And three, no ILO convention which conflicts with a State law and practice will be ratified unless and until the conflicts between the convention and the State law and practice are resolved.

And NAM will oppose ratification if these minimal criteria are not fulfilled and the need and value of the convention is not demonstrated.

[The prepared statement of James D. Burge appears at p. 124.]

Senator MOYNIHAN. All right, sir. Can I ask you to hold there for just 1 minute so we can talk about this?

First of all, we do have a letter of transmittal from the President. It says that because the United States is a party to so few

ILO conventions, we are vulnerable to criticism when we take others to task. But you have been there; he hasn't. So, that's relevant, too.

What I want to ask you is—and I will have to vanish in just a moment—can we provide for your three ground rules? I don't find any problem with your ground rules at all. They are perfectly straightforward and sensible to me.

I would like to see us move on this. A lot of us would. The President wants to. Our friends in the ILO would like us to. Obviously, we could move on the maritime convention because you don't seem to have any problem with that one at all.

The ILO has gone beyond legislation on labor standards, which was its original intent. Now the ILO has conventions on human rights, freedom of association, and things like that.

I am fascinated by Ambassador Katz' point that in the United States, the rights of collective bargaining derive from the individual as against the corporate body which is a very European kind of institution.

I'd like to see us provide for your very thoroughly reasonable groundrules. And I have to say Lane Kirkland made a perfectly good point: These labor conventions require the approval of two-thirds of the U.S. Senate. The law requires half. You are not likely to get anything sliding by that you couldn't pass as a bill.

Will you give some thought as to what procedures are appropriate? Our distinguished ILO representative is here in the room—how might we put these in as part of legislative history? We will try. If we can, we will.

And if we can't, I don't think we should take divided treaties to the floor. This is something we do as a tripartite enterprise or we don't do it.

It seems to me you have come forward in good faith saying. "Try a little harder and maybe you can ratify these treaties." I think that's what I heard. Did I hear that?

Mr. BURGE. We are saying that the preference would be the understandings that I have just relayed to you. We would be comfortable with the understandings agreed to by the three members: the employer, the employee, and the Government representative of the President's committee.

Senator MOYNIHAN. Of the President's committee.

Mr. BURGE. But absent the inclusion of these understandings or their equivalent, our organization must oppose the ratification.

Senator MOYNIHAN. Mr. Burge, I think you have got yourself a deal. You are in labor relations. You know the time comes to close to contract. I think we can do that. I think we should. I think it is very sensible what you have said, and we will work it out.

And Mr. Lunnie, you are here in town, and we can get you back for a skull session if we have to get everybody around a table before we move. We will not move until we have talked with you. But I think on the basis of what you said, we will.

Mr. BURGE. We would appreciate the opportunity to participate.

Senator MOYNIHAN. It's a great pleasure to have you here. Forgive me if I run. I may lose my voting rights if I don't.

[Whereupon, at 2:34 p.m., the committee was adjourned.]

OPENING STATEMENT
SENATOR ORRIN G. HATCH

October 1, 1987
Senate Committee on Foreign Relations
Hearing on the International Labor Organization

Before beginning, I want to thank the Chairman for holding today's hearing and for the courtesy he and his staff have shown in allowing me to testify on the proposed ratification of International Labor Organization Conventions 144 and 147. The ratification process is of extreme importance regarding, not only the role of the United States in the ILO, but also the role of Congress in formulating labor policy. The Committee should be complimented on its consideration of the President's submission of these two conventions.

On September ll, 1985, I chaired a hearing of the Committee on Labor and Human Resources to consider first, whether there was a link between our failure to ratify conventions and our influence within the ILO; and second, to review the feasibility of U.S. ratification of an ILO labor convention without creating a detrimental effect on U.S. labor law.

The hearing made it quite clear that our failure to ratify a single ILO convention during the last three decades has undermined the effectiveness of our representatives to this

IMPORTANT ORGANIZATION. WHILE THE ILO HAS SUFFERED FROM SEVERAL POLITICAL PROBLEMS THAT SEEM INHERENT IN INTERNATIONAL ORGANIZATIONS, IT STILL SERVES SEVERAL IMPORTANT FUNCTIONS. BASED ON THE CONCEPT OF TRIPARTITISM, IT PROVIDES A COMMON FORUM FOR REPRESENTATIVES OF EMPLOYERS, EMPLOYEES AND GOVERNMENTS TO FASHION LABOR STANDARDS. IT ALSO PROVIDES THIS COUNTRY WITH A UNIQUE OPPORTUNITY TO DEMONSTRATE FAVORABLY ITS BRAND OF LABOR RELATIONS AND EMPLOYEE RIGHTS, ESPECIALLY COMPARED TO THE LABOR FORCE REALITIES OF COMMUNIST COUNTRIES. THIS LATTER FEATURE WAS PERHAPS BEST EVIDENCED BY OUR ROLE IN THE CONDEMNATION BY THE ILO OF THE POLISH GOVERNMENT'S SUPPRESSION OF THE SOLIDARITY MOVEMENT.

UNFORTUNATELY, WHEN WE HAVE CRITICIZED COMMUNIST VIOLATIONS OF ILO STANDARDS, OUR CREDIBILITY HAS ALWAYS BEEN SOMEWHAT SUSPECT GIVEN OUR OWN REFUSAL TO EVEN CONSIDER RATIFYING ILO CONVENTIONS. TO BE TAKEN SERIOUSLY IN THIS ORGANIZATION WE, AS A NATION, MUST BREAK AWAY FROM THE POLICY OF THE LAST THIRTY YEARS THAT WE WILL NOT RATIFY A CONVENTION, REGARDLESS OF ITS CONTENT.

NONETHELESS, WE MUST ALSO TAKE GREAT CONCERN TO ENSURE THAT SENATE RATIFICATION OF ILO CONVENTIONS DOES NOT USURP THIS COUNTRY'S TRADITIONAL BICAMERAL FORMULATION OF LABOR POLICY. AN ILO CONVENTION SHOULD NOT BE RATIFIED IF IT WOULD OVERTURN EXISTING FEDERAL OR STATE LABOR LAW. SIMILARLY, RATIFICATION OF ONE CONVENTION SHOULD NOT BE CONSIDERED SUFFICIENT PRECEDENT FOR RATIFYING OTHERS. EACH CONVENTION MUST BE CONSIDERED BY ITSELF.

It is my understanding that to address this latter concern, the President's Committee on the ILO has agreed to certain ground rules governing the examination of ILO conventions. First, each ILO convention will be examined on its own merits on a tripartite basis. Second, if there are any differences between the convention and Federal law and practice, these differences will be dealt with in the normal legislative process. And third, there is no intention to overturn State law and practice by Federal action through ratification of ILO conventions. The examination will include a review of possible conflicts between Federal and State law that would result from ratification. The Committee should be commended for establishing these important criteria.

When considered in light of these principles, Convention 144, which concerns tripartite consultation with regard to ILO issues, and Convention 147, which establishes certain minimum standards on merchant ships, should be ratified. They will not overturn existing labor law, and Convention 144 really mirrors our current practice. More importantly, their ratification will send an important signal to the other members of the ILO.

Mr. Chairman, many of the witnesses scheduled to testify today have played a critical role in revitalizing our function at the ILO. The leadership displayed by Lane Kirkland and Irving Brown is well established, and much credit should go to Secretary Brock for his efforts in getting the Federal government moving

AGAIN. AMBASSADOR KATZ SHOULD ALSO BE CONGRATULATED FOR HIS ROLE IN BRINGING THE BUSINESS COMMUNITY AROUND TO ITS CURRENT POSITION.

MR. CHAIRMAN, I AGAIN APPLAUD THE COMMITTEE FOR HOLDING THESE HEARINGS AND HOPE THAT MY COLLEAGUES WILL JOIN ME IN SUPPORTING RATIFICATION OF THESE TWO CONVENTIONS.

TESTIMONY OF LANE KIRKLAND, PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE ON RATIFICATION OF ILO CONVENTIONS 144 and 147

OCTOBER 1, 1987

Mr. Chairman and Members of the Committee:

My name is Lane Kirkland. I am President of the AFL-CIO and I welcome this opportunity to appear before your Committee on behalf of the workers of the United States represented in the International Labor Organization (ILO) to urge this Committee to recommend ratification by the Senate of ILO Conventions 144 and 147. Both of these Conventions have been submitted to you for advice and consent with a strong endorsement by the President of the United States.

In the interest of time, I shall not, in this appearance, comment on Convention 147, which is a maritime Convention concerning minimum standards in merchant ships, first, because we understand ratification of this Convention is unopposed and, second, because statements on that Convention will be made by others primarily concerned with its provisions.

Instead, I shall focus my attention and this statement of our views on Convention 144 which provides for tripartite consultations between representatives of our Government, Employers and Workers groups recognized at the ILO at least once a year with respect to certain basic activities of the ILO. Such consultations have, in practice, taken place in the United States regularly ever since Convention 144 was adopted. In short, we are recommending that the United States support formally through ratification what we are already doing as a matter of choice with respect to our relations with the ILO itself.

A consensus in favor of ratification of Convention 144 -- as well as Convention 147 -- has been reached by the President's Committee consisting of the Departments of State, Labor and Commerce, the President's Assistant for National Security Affairs, the U.S. Council of International Business, the recognized representative of Employers, and the

AFL-CIO, the recognized representative of the U.S. workers. This is a major breakthrough after over thirty years of frustration in seeking United States ratifications of ILO Conventions and a few words of explanation are warranted.

First, as the Committee knows, the ILO is unique in the respect that it is the only tripartite organization in the United Nations. It is generally agreed, and it is most certainly our view, that this structure is why the United States has been more successful in accomplishing its objectives at the ILO than at other United Nations organizations.

The most important aspect of the ILO's work is its development of principles and policies for the protection of fundamental interests of workers, particularly in the field of human rights, the freedom of worker association, the freedom to organize and to bargain collectively, the freedom from discrimination in employment as well as from exploitation in the number of hours worked, wages paid or in the form of unsafe or unhealthy working conditions.

All members of the United States tripartite delegation -- Government, Employers and Workers, through their delegates and advisers -- participate annually in the work of the ILO Conference where Conventions and Recommendations are adopted.

Work on proposed standards -- which may become a Convention or Recommendation, or both -- is deliberate and time consuming. Surveys and questionnaires are circulated to all member countries for their views by the Office of the Director General. These are compiled and a draft of the instrument is then prepared and referred to an appropriate committee for discussion, amendments and action. This is the first discussion. Almost invariably deliberations and committee reports on proposed standards are spread over two succeeding annual conferences. Once these discussions are completed, the committee' report and recommendation is referred to the Plenary of the Conference where a vote is taken. Conventions can be adopted only by a two-thirds majority vote.

In the light of this careful consideration and required vote for adoption, it is interesting to note that Convention 144 was adopted in 1976 by a vote of 305 in favor with zero against and 70 abstentions.

After a Convention has been ratified, the ILO's regular supervisory procedures takes over through its Committee of Experts and its Conference Committee on Application of Conventions and Recommendations. The Committee of Experts first evaluates whether the Conventions are being applied as required by their terms. Where this is not the case, the nature of the failure to comply is discussed in certain selected cases and becomes the central and most important part of the work of the Conference Committee on Applications.

Another function of the Conference Committee on Application of Conventions and Recommendations is its general discussion of the extent to which member states ratify important Conventions. Here the United States has been the target of considerable criticism on an annual basis. This was the subject of a Hearing before the Senate Committee on Labor and Human Resources in 1985 (chaired by Senator Orrin Hatch). As stated in the letter from Secretary of Labor Brock of December 30, 1985 to Secretary of State Shultz -- which is attached to the President's letter of transmittal of Convention 144 to the Senate -- the criticism of the United States' failure to ratify ILO Conventions -- particularly in the field of human rights -- is a long-standing problem in achieving our aims at the ILO. For that reason, I think it is important to repeat to this Committee two essential points from my 1985 testimony before the Labor Committee.

The first point concerns the statistical record itself. Of the 162 Conventions adopted by the ILO, the United States has, to date, ratified only seven. Six are maritime conventions and one is a purely procedural Convention transferring the ILO from the

League of Nations to the United Nations. Of the six maritime Conventions, two have not received a sufficient number of ratifications to enter into force; that leaves a net of five ratifications by the United States in effect. Of the countries with a comparable length of ILO membership, only one (El Salvador) has fewer ratifications than the United States. By contrast, the Western European members of the European Economic Community have an average of 70 ratifications. And some have more than a hundred.

My second point is that improvement in our ratification record is not solely in the interest of the working people of the United States but also in the political interests of the United States and in the interest of meeting our responsibilities to the ILO. As proof of this we have only to look at the concluding paragraph of the letter of transmittal of Convention 144 by the President to the Senate where he states, "Because the United States is a party to so few ILO Conventions, we are vulnerable to criticism when we seek to take others to task for failing to adhere to instruments we ourselves have not ratified."

We have, as the President's letter suggests, been under an ever-increasing barrage of stinging criticism not only from our adversaries but also, in recent years, from our friends and allies in the world community who view with puzzlement and disappointment the ratification record of a nation that prides itself as the champion of human rights throughout the world. Yet we have ratified none of the human rights Conventions.

As Secretary of State Shultz -- who should know -- emphasized in the statement which he made before the Labor Committee: "It is my judgment that an improved ratification record would have served U.S. foreign policy interests better. More importantly, I believe a better record can help us in the future."

Now let me turn to what has been accomplished since my appearance before the Labor Committee in September of 1985. After considerable discussion of the then-existing impasse and the importance of a serious effort to resolve it, a compromise was reached at the meeting of the President's Committee on October 17, 1985. A subcommittee called the Tripartite Advisory Panel on International Labor Standards (TAPILS) -- on which my colleague Ed Hickey here with me today sits as the legal representative of the AFL-CIO -- had submitted a report to the President's Committee of its unanimous conclusion that there were no obstacles, in law or practice, to ratification of Convention 144.

The President's Committee, in adopting this report of its subcommittee of legal advisers, took up and resolved by unanimous action future handling of ILO Conventions. The agreement reached on procedure to be followed sets forth a formula of governing principles by providing that (1) each ILO Convention will be examined on its merits on a tripartite basis; (2) if there are differences between the Convention and federal law and practice, these will be dealt with in the normal legislative process; and (3) since there is no intention to change state law and practice by ratification of ILO Conventions, the examination will include possible conflicts between federal and state law that would be caused by such ratification.

This is a beginning. We have a formula for considering ILO Conventions. And, as a result, the President has presented to the Senate for ratification a key ILO Convention. I hope and trust that this will be a first step toward more hospitable consideration of some of the ILO's human rights Conventions.

That completes my statement, Mr. Chairman. I shall be pleased to respond to any questions.

STATEMENT OF
WILLIAM E. BROCK
SECRETARY OF LABOR
BEFORE THE
SENATE FOREIGN RELATIONS COMMITTEE
UNITED STATES SENATE

October 1, 1987

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to discuss ratification of International Labor Organization (ILO) Convention No. 144 Concerning Tripartite Consultations to Promote the Implementation of International Labor Standards and Convention No. 147 Concerning Minimum Standards in Merchant Ships. As Secretary of Labor, I serve as Chairman of the President's Committee on the International Labor Organization, a tripartite consultative mechanism on ILO matters that is composed of representatives of government, labor and business. I am accompanied by Mr. George Salem, the Solicitor of Labor. Mr. Salem serves as Chairman of the Tripartite Advisory Panel on International Labor Standards (TAPILS), a subgroup of our President's Committee. His panel was responsible for the legal analysis which provided the basis for the President's request for the advice and consent of the Senate regarding ratification of these two ILO conventions.

Mr. Chairman, the Senate already has before it President Reagan's two April 10, 1986 messages transmitting Conventions 144 and 147, which I am attaching to this statement for the assistance of the Committee. These documents include a summary of the conventions; a statement of U.S. law and practice regarding them; a description of the unique tripartite structure of the ILO and the parallel tripartite structure, history and work of the President's Committee; and the general reasons why the President, the Secretary of State, and I recommend that the Senate give its advice and consent to ratification of both of these ILO conventions.

Since those attached documents provide you with all the necessary background information, I shall today restrict my comments to two issues. First, I want to elaborate on the Administration's views regarding questions that have been raised about the domestic implications of U.S. ratification of Convention 144. I then want to speak to the principal reasons why I believe U.S. ratification of these two ILO conventions--in particular, Convention 144--serves our interests abroad as well as at home.

Convention No. 144 is a procedural standard, which simply requires ILO members that ratify it to establish and maintain a mechanism to ensure effective tripartite consultations between governments, employers and workers on matters relating to the ILO. Article 5(1)(c) of that instrument provides, inter alia, for tripartite consultations on the re-examination, at appropriate intervals, of unratified ILO Conventions.

Despite its procedural nature, this convention generated in our tripartite discussions in the President's Committee a number of more general concerns about its implications regarding future U.S. ratification of other ILO standards. Concerns were especially expressed that we in the Executive

Branch might seek ratification of ILO conventions that are inconsistent with U.S. labor laws and practices. Indeed, fears were expressed that the President and the Senate might use their treaty making power regarding ILO standards to compromise our domestic labor law by bypassing normal legislative procedures and ignoring our Federal/State system of government.

Those fears must be set finally to rest. Neither I, nor any member of the President's Committee, want to use ratification of ILO instruments to change American labor law and practice. In my view, that is not only an unwarranted fear, it is also one that we simply can no longer afford.

It was for that reason that we established the Tripartite Advisory Panel in 1980: to make sure that the Executive Branch would not recommend ratifying any ILO convention that is inconsistent with Federal or State law. ILO Conventions 144 and 147 unequivocally meet that standard. This tripartite group of lawyers exhaustively analyzed both conventions from three perspectives: government, labor, and business. It unanimously concluded that neither convention conflicts in any way with U.S. law or practice, as the attached documents clearly demonstrate. I am also very pleased to report that the American Bar Association, at its February 1987 meeting, adopted a resolution supporting ratification of Convention 144.

To further allay those outdated but apparently still very real fears, the President's Committee also developed--again on a tripartite basis, and again with the unanimous support of its Executive Branch, labor, and business members--the ground rules for future consideration of U.S. ratification of ILO instruments, which is required by Article (5)(1)(c) of Convention 144. Although that statement of general principles is included in the President's Message concerning Convention 144, it bears reiteration here.

That agreement establishes that neither the President's Committee, nor its constituent members, intend to use ratification of ILO conventions to change U.S. labor law. Not now, not ever. The agreement comprises three principles:

- That each ILO convention will be examined on its merits on a tripartite basis;
- That if there are any differences between the convention and Federal law and practice, these will be dealt with in the normal legislative process; and
- That there is no intention to change State law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

Similarly, though ratification of Convention 147 would continue a long (albeit thin) U.S. tradition of ratifying ILO maritime conventions, we have proposed five understandings, to ensure that the meaning of certain terms in that instrument is clearly understood.

Turning now to the reasons why U.S. ratification of these two ILO conventions--one procedural, requiring tripartite consultation on ILO matters; one substantive, requiring certain minimum standards in merchant ships--would clearly advance U.S. interests.

As some of you know very well, we have a dismal ILO ratification record. Between 1934, when we joined the ILO, and 1986, when President Reagan submitted Conventions 144 and 147, the Executive Branch has submitted only 24 ILO conventions to the Senate for advice and consent to ratification. Only seven have been ratified; all but one were maritime conventions.

Why is our ratification record so poor? To a very real extent, the answer is because of old confusions and misplaced fears. These were ignited in 1949, when President Truman transmitted one of the most important of all ILO conventions, No. 87, on freedom of association, to the Senate for its advice and consent to ratification. Shortly thereafter, he also submitted the Genocide Convention and the Inter-American Convention on the Granting of Political Rights to Women.

The submission of those human rights instruments caused concern in the Congress that ratification of those treaties would be used to accomplish domestic objectives that neither the Constitution intended, nor the Congress or the States desired. There were fears that the power of treaty making would be used to circumvent normal legislative procedures. Thus, to foreclose ratification of treaties, especially those concerning fundamental human and worker rights, in 1953, Senator John Bricker of Ohio introduced a Resolution to amend the Supremacy Clause of the U.S. Constitution. Although the Bricker Amendment was defeated by one vote, it had a profound chilling effect on both the Congress and the Executive Branch.

Last year, the Senate broke this impasse by giving its advice and consent, on February 16, 1986, to U.S. ratification of the Genocide Convention. Similarly, on April 10 of last year, President Reagan ended a generation of Executive Branch inaction on U.S. ratification of ILO standards by submitting Conventions 144 and 147.

Why do we need to ratify these instruments? The answer is because it will help U.S. efforts to support the ILO's very substantial human rights activities, help us play a more effective leadership role in that Organization, and thereby help us promote American democratic values and interests abroad.

The ILO is certainly not without its flaws. Indeed, you are aware they had become so egregious by the mid-1970's that we withdrew from the Organization in 1977. We did not return until 1980, after the ILO had taken several important steps to reverse the trends that had prompted our withdrawal.

Notwithstanding its continuing imperfections and current problems, which necessitate careful monitoring on our part, we must also remember that the ILO is the only member of the United Nations system (in fact, it is the only international organization), where governments meet with workers and employers as equal partners. It is no accident that it is among the most pro-West of all agencies in the United Nations, as well as its most effective champion of human rights.

The ILO was created in 1919 to bring governments, employers, and trade unions together for united action, to improve working conditions, generate employment, and promote human rights in the world at large. The rationale for this lofty undertaking was not just highminded internationalism, but also hardheaded national self-interest. As the ILO Constitution notes, "the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries."

The ILO's unique tripartite structure--its fundamental principle of tripartism, of cooperation between government, labor and business--makes it a natural forum for promoting American concepts of democracy, pluralism, free trade unions and free enterprise.

How does our poor ratification record work against us in that forum? In recent years, we have strongly supported the ILO's courageous stand against human rights violations in the highly publicized case of Poland. We have similarly supported its efforts to convince other countries whose substantial violations of fundamental worker rights are not common knowledge, e.g., Iran, Chile and Czechoslovakia, to bring their human rights practices into conformity with the ILO standards they have ratified.

Not surprisingly, the Soviet Bloc has long mounted a many-pronged attack to subvert the ILO's entire system for supervising its Member States' implementation of ILO standards. One way to attack that system is to attack its most prominent proponent. The Soviets have therefore aggressively sought to undermine U.S. credibility and to bar U.S. participation from ILO discussions of labor and human rights violations. They use our ratification record as the basis for their claim that we have no moral right to participate in examining cases involving members that have ratified ILO conventions. These East bloc charges of U.S. hypocrisy do not always fall on deaf ears. Third World delegates, and some of our Western allies, find it difficult to reconcile our leadership role on worker rights in the ILO with our continuing failure to ratify its standards.

We have responded through the years by noting that U.S. laws and practices in fact generally meet--indeed, often surpass--ILO standards. Unfortunately, however, this is not an especially compelling argument in the ILO, because our failure to ratify ILO standards generally exempts us from examination under its supervisory machinery. Thus, although we are a leading critic of violations of fundamental human and worker rights and one of the strongest supporters of the ILO's unique, tripartite system for the setting and supervision of its Member States' application of ILO standards, we have nevertheless removed ourselves from most ILO scrutiny. Further, our failure to ratify most ILO conventions bars us, under the ILO Constitution, from bringing complaints against Member States for their failure to observe standards they have ratified. Our ratification record therefore weakens our leadership in a practical, as well as in a moral or psychological, sense.

In short, our poor ratification record provides our adversaries with a ready-made charge that, in the oldest and most effective international human rights organization, the United States does not practice what it preaches. This in turn helps those who oppose a democratic system of government, free trade unions and free enterprise, to chip away at the integrity of the ILO supervisory machinery and dampen the commitment of developing countries to human rights and international labor standards.

Lastly, our poor ratification record in the ILO creates a new, albeit similar, problem. As Secretary Shultz and Senator Orrin Hatch pointed out in tho Senate Labor Committee's 1985 hearing on the ILO, our failure to ratify ILO conventions is inconsistent with the growing tendency in the Congress to include internationally recognized worker rights standards in U.S. trade and aid legislation. Again, I fear we become susceptible to charges that we criticize other countries--especially those that are substantially less economically developed than we--for a failure to observe international labor standards that we ourselves have never ratified.

Let me give you a concrete example why the Administration, the AFL-CIO, and the U.S. Council for International Business are all here today, unanimously supporting ratification of these two ILO conventions, by describing an incident that happened in Geneva, late in the June 1985 International Labor Conference.

When the Conference Committee on the Application of Conventions and Recommendations report came up for final adoption, one of our Government representatives made a short statement, explaining why we were troubled by the way the Committee had handled two cases, one involving the Soviet Union; the other, Nicaragua.

One of the reasons that we withdrew from the ILO in 1977 was because the ILO had developed a double standard for human rights: by avoiding citing communist countries, particularly the USSR, for violating the ILO's key freedom of association, forced labor, and employment discrimination conventions, the Conference was exhibiting a highly selective concern for human rights.

The ILO has made substantial progress with that problem since then, but in 1985, we feared that it was beginning to backslide again. Thus, one of our Government representatives made a short low-key statement, in order to raise a warning flag.

What happened was not low key. The Nicaraguan Government delegate took the floor, and said in rebuttal:

> To the allusions made by the delegate of the United States, in all sincerity we cannot understand how the government of a country which has not even ratified 10 percent of the Conventions of the ILO, and which haughtily disdains the whole body of international law that exists to foster coexistence among States, can dare to pretend to judge the conduct of the very countries which it is criminally aggressing.

Mr. Chairman, that is by no means an isolated incident, and I am of the firm view that we should not be giving

Nicaragua--or any other country--grounds for challenging our Government's commitment to human rights and internationally recognized worker rights.

Finally, you may ask, why should the U.S. choose these particular ILO conventions for ratification? Let me give you three good reasons:

First, because, as I have already noted, we already fully comply with both conventions. The U.S. has long practiced tripartite consultation on ILO matters. Existing U.S. legislation, regulations, and industry practice are already in full compliance with Convention 147's standards for the working and living conditions of seafarers.

Second, because we have achieved--through no small effort, on everyone's part--tripartite consensus that each convention warrants ratification on its own merits. The merits of each are obvious. We should ratify Convention 144 because a government has no business being a member of a tripartite international labor organization unless it consults with its social partners about its role and activities in that organization. We should ratify Convention 147 because it will reduce marine casualties, especially tanker spills, and improve the safety and welfare of seafarers on merchant ships, worldwide.

Third, because Convention 144 has become both a symbol and a test of whether a member country of the ILO pays more than lip service to the basic principles of the Organization. Tripartism is, as I have explained in some detail, the most distinctive feature of the ILO. Genuine tripartism requires autonomy. This is true in the ILO, where the Employer and Worker Groups zealously guard their independence from the Government Group, and it is true in ILO member countries. Free trade unions and free employer associations are inherent in the very principle of tripartism. That is why the Soviets consider Convention 144 to be "incompatible with the sovereign right of each member State to determine its own procedures of consultation on matters relating to ILO activities." And that is precisely why the United States, which was founded on the very concept of self-determination, should ratify this ILO Convention.

99TH CONGRESS
2d Session

SENATE

TREATY DOC.
99-20

ILO CONVENTION (NO. 144) CONCERNING TRIPARTITE CONSULTATIONS TO PROMOTE THE IMPLEMENTATION OF INTERNATIONAL LABOR STANDARDS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A CERTIFIED COPY OF THE CONVENTION (NO. 144) CONCERNING TRIPARTITE CONSULTATIONS TO PROMOTE THE IMPLEMENTATION OF INTERNATIONAL LABOR STANDARDS, ADOPTED BY THE INTERNATIONAL LABOR CONFERENCE AT GENEVA ON JUNE 21, 1976

APRIL 11, 1986.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
71-118 O WASHINGTON : 1986

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 10, 1986.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a certified copy of the Convention (No. 144) Concerning Tripartite Consultations to Promote the Implementation of International Labor Standards, adopted by the International Labor Conference at Geneva on June 21, 1976. I transmit also for the Senate's information a certified copy of the recommendation (No. 152) on the same subject, adopted by the International Labor Conference on that same date, which amplifies some of the Convention's provisions. No action is called for on the recommendation.

The report of the Department of State, with a letter from the Secretary of Labor, concerning the Convention is enclosed.

I support fully the principle of tripartite consultations among government, employers, and workers on matters relating to the International Labor Organization. This principle is fundamental to the existing structure of both the ILO and of the consultative mechanisms that have been established within the United States with respect to ILO matters. Ratification of Convention No. 144 therefore would require no change in the way the United States has organized to deal with the ILO.

Because the United States is party to so few ILO conventions, we are vulnerable to criticism when we seek to take others to task for failing to adhere to instruments we ourselves have not ratified. Ratification of Convention No. 144 would reduce this vulnerability. I therefore recommend that the Senate give its advice and consent to the ratification of ILO Convention No. 144.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 20, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for advice and consent to ratification, a certified copy of the Convention (No. 144) Concerning Tripartite Consultations to Promote the Implementation of International Labor Standards, adopted by the International Labor Conference at Geneva on June 21, 1976. A certified copy of a recommendation (No. 152) amplifying some of the provisions of the Convention is enclosed for the Senate's information.

The Convention calls upon ratifying governments to establish and maintain mechanisms for effective tripartite consultations among government, employers, and workers on matters relating to the ILO. The recommendation provides suggestions on how the provisions of the Convention might be implemented.

The Secretary of Labor, in his enclosed letter, provides additional details concerning the Convention and the recommendation. He states in the analysis enclosed with his letter that under existing procedures the United States is already in compliance with its obligations under the Convention. His view is concurred in by all interested departments and agencies.

I am pleased to join with the Secretary of Labor in recommending that the Convention be transmitted to the Senate for advice and consent to ratification, a step which is consistent with our policy of support for an active participation in the work of the ILO.

Respectfully submitted,

GEORGE P. SHULTZ.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, December 30, 1985.

Hon. GEORGE P. SHULTZ,
Secretary of State, Washington, DC.

DEAR GEORGE: This will express the coordinated view of the interested departments and agencies with respect to U.S. ratification of Convention No. 144 concerning Tripartite Consultations to Promote the Implementation of International Labor Standards. It was adopted, along with Recommendation No. 152 which amplifies some of its provisions, by the International Labor Conference, June 21, 1976.

Convention No. 144 is essentially a procedural standard relating to the administrative machinery for participating in the International Labor Organization (ILO), and does not change U.S. domestic labor law. It simply provides that ILO members which ratify it must establish and maintain machinery to ensure effective tripartite consultations between governments, employers and workers on matters relating to the ILO.

The United States Government, employer and worker delegates to the 1976 Conference voted for adoption of both instruments. Convention No. 144 was adopted by a vote of 305 for, none against, with 70 abstentions; Recommendation No. 152 was adopted by a vote of 354 for, none against, with 7 abstentions.

On December 16, 1983, the President's Committee on the ILO adopted a report of its Tripartite Advisory Panel on International Labor Standards which unanimously concluded that there are no obstacles, in law or practice, to U.S. ratification of Convention No. 144. I am enclosing a statement which outlines the provisions of Convention No. 144 and Recommendation No. 152, as well as relevant U.S. law and practice.

A number of general concerns were expressed during the course of our tripartite consultations concerning ratification of Convention No. 144 about how it would affect U.S. participation in the ILO, and whether its ratification might lead to pressure to ratify other ILO instruments which might change domestic labor law and practice.

These questions were thoroughly discussed during hearings before the Senate Labor and Human Resources Committee on September 11, 1985, in which we both participated along with Lane Kirkland, President of the American Federation of Labor–Congress of Industrial Organizations, and Abraham Katz, President of the U.S. Council for International Business. As a result of these hearings, we believe a clear record now exists which addresses the general concerns which had been expressed earlier.

Regarding the examination of unratified conventions provided for in Article 5(1)(c) of Convention No. 144, there is agreement by the U.S. Government agencies concerned, the AFL–CIO, and the U.S. Council for International Business: that each ILO convention will be examined on its merits on a tripartite basis; that if there are any differences between the convention and Federal law and practice, these will be dealt with in the normal legislative process; and that there is no intention to change State law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

We have concluded that ratification of Convention No. 144 would be a positive development in terms of U.S. interests in the ILO, and we recommend, therefore, that the President submit it to the Senate with a request for advice and consent to ratification.

With regard to Recommendation No. 152, we recommend that pursuant to the obligations under paragraph 7(a) of Article 19 of the ILO, the State Department should transmit it to the Congress for such action as it may deem appropriate.

Very truly yours,

William E. Brock.

Enclosure.

STATEMENT OF UNITED STATES LAW AND PRACTICE WITH RESPECT TO ILO CONVENTION NO. 144 AND RECOMMENDATION NO. 152 (TRIPARTITE MACHINERY)

I

Before setting forth the specific provisions of Convention No. 144, it is necessary to describe briefly the tripartite structure of the International Labor Organization (ILO) and thereby demonstrate why Convention No. 144 merely extends the application of certain principles of tripartism set forth in the Constitution and practice of the ILO.

An essential characteristic of the ILO is the fact that it is composed not only of government representatives but also of representatives of employers' and workers' organizations. Thus, Article 3 of the ILO Constitution provides that the meetings of the General Conference (which are usually held once in every year) shall be composed of four representatives of each of the members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the members. Article 3 also provides that the members undertake to nominate non-Government delegates chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

Article 7 of the ILO Constitution provides that the Governing Body of the ILO shall consist of 56 persons, 28 representing governments, 14 representing the employers, and 14 representing the workers. Thus, employers' and workers' representatives make up half the membership of both the General Conference and the Governing Body.

Beyond the General Conference and the Governing Body, it should be noted that meetings in the ILO take other forms: special conferences on particular issues, committees, groups of experts or specialists, and ad hoc meetings. With rare exceptions, all these meetings are tripartite, so that all decisions reached in them represent the views of employers and workers as well as those of governments. Thus, tripartism is the very essence of the ILO and, as will be shown from the following description of Convention No. 144, the Convention merely elaborates certain principles already established in the ILO Constitution and in the workings of the ILO system.

Article 1 of the Convention provides that the term "representative organizations" means the most representative organizations of employers and workers enjoying the right of freedom of association.

Under Article 2, each member of the ILO which ratifies the Convention undertakes to operate procedures which ensure effective consultations concerning the activities of the ILO set out in Article 5, paragraph 1, between representatives of the government, of employers and of workers. The nature and form of these procedures shall be determined in each country in accordance with national practice.

Article 3 provides that the representatives of employers and workers, for the purposes of the procedures provided for in the Convention, shall be freely chosen by their representative organizations, where such organizations exist. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken.

Article 4 provides that the competent authority shall assume responsibility for the administrative support of the procedures provided for in the Convention. Appropriate arrangements shall be made between the competent authority and the representative organizations for the financing of any necessary training of participants.

Article 5 states that the purpose of the procedures provided for in the Convention shall be consultations on the following: (1) government replies to questionnaires concerning items on the agenda of the International Labor Conference and government comments on proposed texts to be discussed by the Conference; (2) the proposals to be made to the competent authority or authorities in connection with the submission of conventions and recommendations pursuant to Article 19 of the Constitution of the ILO; (3) the re-examination at appropriate intervals of unratified conventions and of recommendations to which effect has not yet been given, to consider what measures might be taken; (4) questions arising out of reports to be made to the International Labor Office under Article 22 of the Constitution of the ILO; and (5) proposals for the denunciation of ratified conventions. Such consultations shall be undertaken at appropriate intervals to be fixed by agreement, but at least once a year.

Article 6, the final substantive article of the Convention, provides that the competent authority shall issue an annual report on the working of the procedures provided for in the Convention when this is considered appropriate, after consultation with the representative organizations.

Recommendation 152 sets forth certain suggestions for carrying out the consultative procedures provided for in the Convention. For example, such consultations may be undertaken (a) through a committee specifically constituted for questions concerning the activities of the ILO; (b) through a body with general competence in the economic, social or labor field; (c) through a number of bodies with special responsibility for particular subject areas; (d) through written communications.

The Recommendation also provides that measures should be taken, in accordance with the employers' and workers' organizations concerned, to make available appropriate training to enable participants in the procedures to perform their functions effectively.

In addition to the consultations provided by the Convention, the Recommendation proposes consultations on the preparation and implementation of legislative or other measures to give effect to international labor conventions and recommendations, in particular to ratified conventions.

The Recommendation further suggests consultations on other matters of mutual concern such as the preparation, implementation and evaluation of technical cooperation activities in which the ILO participates; the action to be taken in respect to resolutions and other conclusions adopted by the International Labor Conference, regional conferences, industrial committees and other meetings convened by the ILO; and the promotion of a better knowledge of the activities of the ILO as an element for use in economic and social policies and programs.

II

Given the tripartite character of the U.S. delegation to the General Conference and the participation of employer representatives and worker representatives in the Governing Body, there has been a long history of effective consultation on ILO matters generally among the U.S. Government and the employer and worker representatives. Thus, for example, for many years government replies to questionnaires concerning items on the agenda of the International Labor Conference (Article 5, paragraph 1 of Convention 144) have first been sent to the employer and worker representatives prior to submission to the ILO. Similarly, reports to be made to the International Labor Office under Articles 19 and 22 of the Constitution of the ILO, concerning the measures taken to give effect to the provisions of unratified and ratified conventions, are also sent to the representative organizations for comment.

The consultation process which has operated effectively over the years was first formalized or institutionalized in November 1975 when President Ford appointed a Cabinet-Level Committee to advise him on ILO matters. This Committee included the active participation of the President of the AFL–CIO and a representative of the U.S. Chamber of Commerce (at the time, the most representative employer organization). The Secretary of Labor was the Chairman.

On June 18, 1980, President Carter, by Executive Order 12216, created the "President's Committee on the International Labor Organization." This Committee was created as an advisory committee in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1). Its life has been extended several times, and is currently mandated through September 30, 1987.

The members of the Committee are the Secretaries of Labor, State, and Commerce, the Assistant to the President for National Security Affairs, and the Presidents of the AFL–CIO and the United States Council for International Business (the most representative employer organization). The Chairman is the Secretary of Labor.

The functions of the Committee are:

(1) to monitor and assess the work of the ILO.

(2) to make recommendations to the President or other officers of the Federal Government, including the Secretary of Labor. "With due recognition that in the ILO tripartite system, government, employer, and employee representatives retain

the right to take positions independent of one another, the Committee shall exert its best efforts to develop a coordinated position as to United States policy on ILO issues."

(3) to perform other functions relevant to relations with the ILO as requested by the President or the Committee Chairman.

The Committee established a staff-level Consultative Group to coordinate and support its work. The Consultative Group provides tripartite, interagency technical and administrative advice with respect to the U.S. position in ILO general Conferences and other meetings, potential U.S. Government initiatives relating to the ILO, as well as decisions of policy endorsed by the President's Committee. It generally meets every four to five weeks. Employer and worker representatives are members of and participate actively in the work of this Group.

The President's Committee also created a subcommittee called the Tripartite Advisory Panel on International Labor Standards. This group consists of legal advisers from the Departments of Labor, Commerce, and State, the AFL–CIO, and the U.S. Council for International Business. The Panel is chaired by the Solicitor of Labor. The Panel's principal functions are to develop analyses of the degree of U.S. compliance with selected ILO conventions and to examine the impact of ratification on existing and developing domestic labor law. The Panel submits its conclusions, with any observations or minority views, to the President's Committee. Thus, for example, the Tripartite Advisory Panel fulfills one of the functions described in Article 5 of Convention 144, namely, the re-examination at appropriate intervals of unratified conventions.

The Tripartite Advisory Panel has also become the principal vehicle for reviewing reports to be made to the International Labor Office under Articles 19 and 22 of the ILO Constitution. The Tripartite Advisory Panel would also be the appropriate body to study and make recommendations concerning proposals for the denunciation of ratified conventions.

The Tripartite Advisory Panel has concluded that the United States is in full compliance with Convention 144 and Recommendation 152. No modification of U.S. legislation is required to give effect to the provisions of the Convention. If and to the extent any question were ever to arise with respect to U.S. compliance with the Convention or the Recommendation, it is well within the power of the Executive Branch to make such changes as might be necessary or appropriate.

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ILO CONVENTION (NO. 147) CONCERNING MINIMUM STANDARDS IN MERCHANT SHIPS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A CERTIFIED COPY OF THE CONVENTION (NO. 147) CONCERNING MINIMUM STANDARDS IN MERCHANT SHIPS, ADOPTED BY THE INTERNATIONAL LABOR CONFERENCE AT ITS 62D SESSION IN GENEVA ON OCTOBER 13, 1976

APRIL 11, 1986.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 10, 1986.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification of the Convention (No. 147) Concerning Minimum Standards in Merchant Ships, adopted by the 62nd session of the International Labor Conference, at Geneva, on October 13, 1976, I transmit herewith a certified copy of the Convention. I transmit also for the Senate's information a certified copy of the recommendation (No. 155) concerning the improvement of standards in merchant ships, adopted by the International Labor Conference at the same time as the Convention. No action is called for on the recommendation.

The report of the Department of State, with a letter from the Secretary of Labor, concerning the Convention is enclosed. The Department's report also contains the texts of five proposed understandings. It is proposed that these understandings be included in the United States instrument of ratification, should the Senate give its advice and consent.

Adoption of the Convention and the recommendation was the culmination of a long negotiating process in which the United States participated actively and vigorously supported the drafting of a comprehensive and effective instrument to achieve minimum standards in merchant ships. I believe that the United States ratification of this Convention is in the national interest and in the interest of the world community as a whole, and I, therefore, recommend that the Senate give its advice and consent to ratification, subject to the understandings mentioned above.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 20, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for advice and consent to ratification, a certified copy of the Convention (No. 147) Concerning Minimum Standards in Merchant Ships, adopted by the International Labor Conference at its 62nd Session in Geneva on October 13, 1976. A certified copy of a recommendation (No. 155) concerning the improvement of standards in merchant ships, also adopted at the 62nd Session of the International Labor Conference, is enclosed for the information of the Senate.

The provisions of the Convention are described in the attached letter, dated December 30, 1985, from the Secretary of Labor. The purpose of the Convention, in general, is to improve employment conditions in merchant ships and to expand the ability of "port states" that are party to the Convention to take steps to protect the health and safety of seamen manning merchant vessels calling in those states parties. Five understandings designed to clarify portions of the text of the Convention as they relate to the domestic law of the United States, proposed for inclusion in the United States instrument of ratification, are discussed in the Secretary of Labor's letter. They are as follows:

(1) It is the understanding of the United States that its obligations under Article 1 of this Convention do not extend to uninspected ships, including tugboats, of less than 300 tons.

(2) It is the understanding of the United States that Article 1, paragraph 4(b) of the Convention including fish processing vessels of not more than 5,000 tons and fish tender vessels of not more than 500 tons as ships engaged in fishing or in whaling or in similar pursuits.

(3) It is the understanding of the United States that the term "substantially equivalent" as it appears in Article 2(a) requires the ratifying state to take account of the general goal of the instruments in the Appendix, but does not require it to adhere to the precise terms of these instruments. This means that national laws and regulations may be different in detail, if the ratifying state has satisfied itself that the general goals of the instruments in the Appendix are respected.

(4) The United States Government understands and is satisfied, as required under Article 2(a) of the Convention, that the substantive provisions of United States statutes and regula-

tions are substantially equivalent to the rights and responsibilities established in the instruments enumerated in the Appendix.

(5) It is the understanding of the United States that the legal status of the terms of collective bargaining agreements relating to shipboard conditions of employment and living arrangements have no greater effect than that accorded such terms under United States labor statutes.

The Departments of Labor, Commerce and Transportation support the Convention, and the President's Committee on the International Labor Organization recommends ratification, subject to the understandings set out above.

Respectfully submitted,

GEORGE P. SHULTZ.

STATEMENT OF AMBASSADOR ABRAHAM KATZ

President, U.S. Council for International Business

I am Abraham Katz, President of the U.S. Council for International Business. I serve as the U.S. business spokesman on ILO matters in the President's Committee on the ILO and I am an elected employer member of the Governing Body of the International Labor Organization (ILO). Also present are: Brian J. Glade, Director of International Labor Affairs for the U.S. Council; Philip J. Loree, Chairman of the Federation of American Controlled Shipping; and Edward E. Potter, an attorney with the law firm of McGuiness & Williams, who serves as legal counsel on labor issues to the U.S. Council.

The U.S. Council is the organization that represents American business interests on international economic policy issues at the major international economic institutions and to the executive and legislative branches of the U.S. government. As the U.S. member of the International Chamber of Commerce, it consults with various bodies of the United Nations. It represents business views in the Organization for Economic Cooperation and Development as the U.S. member of the Business and Industry Advisory Committee to that organization. More particularly relevant to these hearings, the U.S. Council is the U.S. member of the International Organization of Employers and has been the organization representing U.S. business in the ILO since 1979. In prior years, the National Association of Manufacturers (NAM) and the U.S. Chamber of Commerce have had this responsibility on behalf of U.S. business. Both the NAM and the U.S. Chamber are members of the Council.

Since the United States joined the International Labor Organization (ILO) in 1934, it has taken a careful and cautious approach to the ratification of ILO conventions. Between 1934 and 1953 when the United States last ratified an ILO convention, it ratified only 7 of the over 160 ILO conventions. Six have concerned maritime matters. The seventh was a minor technical convention caused by the dissolution of the League of Nations and the establishment of the United Nations as the parent body of the ILO. None has involved national labor policies related to collective bargaining or other substantive areas of domestic labor law.

On April 10, 1986, President Reagan submitted the two ILO conventions that are the subject of this hearing to the Senate for its advice and consent to ratification. The first convention--Convention 147--concerns minimum maritime standards that in general would improve employment conditions including health and safety on merchant ships. The U.S. Council supports ratification of this Convention, with the five understandings proposed by the President, which clarify the domestic application of Convention 147. We do not believe that Convention 147 would have any appreciable impact on either U.S. flag merchant vessels or U.S. controlled vessels registered abroad. Most of the latter are registered in Liberia which ratified the Convention some years ago. The real impact of the Convention would be on substandard operators who represent a small minority of shipowners throughout the world. We believe that ratification of Convention 147 would serve a worthwhile purpose either in encouraging substandard operators to upgrade living and working conditions on their vessels or, alternatively, in compelling them to keep substandard vessels out of U.S. ports. Ratification of this Convention would be consistent with the past practice of the United States to ratify only ILO maritime conventions.

The merits of ratifying the second convention--Convention 144--are far more controversial from the business community perspective, however. If ratified, Convention 144 would be the first consequential non-maritime convention ratified by the United States and, thus, set the precedent for the ratification of other ILO conventions that may conflict with U.S. labor law. Moreover, the business community is not convinced that ratification of Convention 144 would significantly improve U.S. effectiveness in the ILO as the proponents of ratification claim.

Convention 144 requires each ratifying country to establish tripartite administrative machinery on certain matters concerning the ILO set out in Article 5 of the Convention. Through the President's Committee on the ILO and its subordinate bodies, the United States already is in compliance with the procedural requirements of this convention. However, the implementation of one provision of Article 5 is of particular concern to the U.S.

business community. Under Article 5(1)(c), the United States would be required to re-examine "at appropriate intervals . . . unratified Conventions and . . . Recommendations to which effect has not been given, to consider what measures might be taken to promote their implementation and ratification as appropriate." The business community is concerned because many of the ILO conventions to be examined are at variance with U.S. law and practice, both at the federal and state levels.

By virtue of its membership in the ILO, the United States under the ILO Constitution has an obligation to consider whether any ILO conventions are appropriate for ratification. When the United States re-entered the ILO in 1979, it began to fulfill this obligation through the legal examination of unratified conventions by the Tripartite Advisory Panel on International Labor Standards (TAPILS), a subgroup of legal representatives of the President's Committee on the ILO, to determine whether any ILO conventions could be ratified without amending U.S. labor law and practice. Between 1980 and 1983, preliminary consideration by TAPILS of the legal impact on domestic labor law of a number of ILO conventions concerning collective bargaining, equal treatment and forced labor identified a number of possible differences between various provisions of those conventions and the requirements of U.S. labor law that require more in-depth legal review. To date, the only conventions that TAPILS has concluded could be ratified without amending U.S. law and practice are Conventions 144 and 147.

Ratification of Convention 144 would reinforce the obligation of the United States under the ILO Constitution to consider ratifying ILO conventions by mandating a procedure for periodic re-examination of the over 150 ILO conventions that have not been ratified by the United States. As the preliminary consideration of other substantive ILO conventions has revealed, many of them may have requirements different from existing U.S. law and, unlike the two ILO conventions now being considered for ratification, involve matters for which there is concurrent federal and state jurisdiction.

The differences between U.S. labor law and the requirements of ILO conventions can be substantial. For example, whenever the subject of ratification of ILO conventions occurs, the suggestion is made that Conventions 87 and 98 concerning freedom of association, the right to organize and collective bargaining should be ratified. In 1984, the first exhaustive and in-depth study of the legal consequences of ratification of any ILO convention was completed with respect to Conventions 87 and 98 by Ed Potter, who represents the U.S. Council on TAPILS. The results of this study, which have not been challenged in any material respect, were published in a monograph entitled Freedom of Association, the Right to Organize and Collective Bargaining (1984). (A copy can be provided for the hearing record.) The study identifies 20 significant changes in U.S. labor law that would result at either the federal or state levels in the public or private sectors if Conventions 87 and 98 were ratified by the United States. These are not matters of detail. Rather, they involve some fundamental precepts of U.S. labor law. For example, to mention just three changes that would occur if Conventions 87 and 98 were ratified, their ratification would:

> 1. Alter a fundamental principle of U.S. labor law that makes union rights derivative from those of employees, by subordinating employee rights to those of labor organizations;
>
> 2. Broaden the classes of employees entitled to National Labor Relations Act-type protection to include supervisors, agricultural workers and public employees; and
>
> 3. Revoke or modify substantial parts of the Labor-Management Reporting and Disclosure Act of 1959, particularly with respect to election procedures and prohibitions against persons with criminal records from holding union office.

Since the National Labor Relations Act was enacted in 1935, Congress has enacted major revisions to the statute only twice--in 1947 and 1959. Significant amendment of U.S. labor law through the normal legislative process involving both Houses of Congress has been the exception rather than the rule. As a result, federal collective bargaining legislation has been relatively stable in the United States and, in the view of the business community, has on the whole contributed to the success of our economy in generating jobs. Consequently, the business community is concerned that by instituting the re-examination of ILO conventions procedure under Article 5, ratification of Convention 144 would create a presumption that it will be possible to alter federal and state legislation by treaty rather than through the normal legislative process. As I will discuss later, this is why the business community is so concerned about establishing agreed ground rules on the implementation of Convention 144.

In addition, despite the TAPILS finding that Convention 144 is not at variance with U.S. law and practice, the business community has been very concerned that its ratification, by ending the longstanding U.S. practice of not ratifying non-maritime conventions, would send the wrong signal to other member countries of the ILO. Ratification of Convention 144 by the United States, therefore, has great symbolic importance in the ILO community. Consequently, the business community thinks that it would be a mistake to agree to ratify such an important convention without publicly explaining the basis (i.e., the ground rules) by which other conventions would be examined for ratification. Not to do so might subject this country to greater pressure to ratify other ILO conventions, especially "cornerstone" conventions such as Conventions 87 and 98, which present problems of different U.S. statutory standards or questions of federal-state jurisdiction, and to additional criticism in the international arena if we fail to do so.

Until the October 17, 1985, meeting of the President's Committee on the ILO, there had been no agreement by the concerned Executive Branch agencies, the U.S. Council on behalf of the business community, and the AFL-CIO on the ground rules by which the tripartite examination of ILO conventions would take place under Article 5(1)(c) of Convention 144 or the circumstances under which U.S. law would be altered in order to conform to the requirements of ILO conventions. I argued at this meeting that such an agreement was necessary if there were going to be any basis for removal of U.S. employer opposition to Convention 144. I pointed out that ratification of Convention 144 launched an open-ended process to consider a large number of ILO conventions for ratification and that employers were particularly concerned that ILO conventions would be used as a mechanism to amend U.S. law rather than through the normal legislative process involving both the House of Representatives and the Senate. I also requested that the ground rules be included as understandings to the ratification instrument as a means of explaining to other ILO member countries the basis for implementation of Convention 144 by the United States.

As reflected in Secretary of Labor Brock's Executive Branch letter to Secretary of State Shultz recommending ratification of Convention 144, after thorough discussion by the President's Committee, a unanimous agreement was reached by its members regarding the rules that would govern the review of ILO conventions. They are:

> 1. Each ILO convention will be examined on its merits on a tripartite basis;
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> 2. If there are any differences between the convention and Federal law and practice, these will be dealt with in the normal legislative process; and
>
> 3. There is no intention to change state law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

The President's Committee, however, did not agree with the employer position that the ground rules should be included as understandings. Subsequent to the October 17, 1985, meeting, I took the results of our discussion and the agreed ground rules to the U.S. Council's Industrial Relations Committee, which after extensive debate decided that the U.S. Council would "not oppose" ratification of Convention 144.

These ground rules are an essential prerequisite to ratification and implementation of Convention 144. They assure that the examination process provided for under Convention 144 will not be used to amend U.S. law and practice. They also signal that the U.S. examination of other ILO conventions will be done in an orderly and deliberate fashion. It is important to emphasize that these ground rules will govern implementation of the Convention by the United States and, therefore, their life is as long as U.S. adherence to the Convention. In other words, these ground rules will outlast changes in Administrations, Congress and the leaderships of the AFL-CIO and the U.S. Council. To that end, the U.S. Council would have preferred that these ground rules be included as understandings to Convention 144 and so communicated to the ILO. We believe it essential to record the agreement on the ground rules in some appropriate formal manner. At the very least, the ground rules should be recorded in the Committee's report to the full Senate.

This concludes my testimony. I will be glad to answer any questions you may have.

STATEMENT OF ANTHONY G. FREEMAN, SPECIAL ASSISTANT TO THE SECRETARY OF STATE AND COORDINATOR, INTERNATIONAL LABOR AFFAIRS

I appreciate the opportunity to appear before the Senate Foreign Relations Committee to discuss the significance of the ILO for the United States, the U.S. role in that organization, and some concrete steps we can take to strengthen our participation.

The U.S. interest in the ILO includes the advantages membership provides for American labor and for American employees as well as for the U.S. Government. Participation offers an opportunity to pursue overall U.S. foreign policy interests in several ways. It permits us to advocate the American economic, social, and political system, and to stress the advantages of a pluralistic society as compared to communist and other totalitarian systems. It serves as a channel to help less developed countries to advance in social and economic directions compatible with U.S. security and ideals. It serves as a multilateral technical assistance agency, with an American presence, in the field of human resources development. It is a platform to promote free labor movements in pluralistic societies. It also provides information about new foreign labor and manpower policies and programs of potential use in the United States.

In addition, the ILO plays a major role in promoting workers' rights. Issues such as freedom of association, the right to bargain collectively, forced labor, child labor, and discrimination in employment are workers' rights which have been of concern to the ILO for many years. ILO efforts to undertake impartial investigations of human rights violations in Eastern Europe have opened a new chapter in the ILO's human rights program -- one which the United States promotes actively.

Moving from U.S. interests in the ILO, I would like to review briefly how we assess developments in the ILO since the United States rejoined the organization in 1980.

The Committee is familiar with the background of our decision to withdraw from the ILO in 1977 because of the unacceptable political directions the Organization had taken in the 1970's, undermining the ILO's own fundamental principles. One of these problem areas was the double standard which had crept in in terms of the failure of the annual conference to cite communist countries found by the supervisory machinery to be in violation of ratified conventions, while concentrating critical attention instead on developing countries perceived as being more closely tied to the United States, as in Latin America.

We returned to the ILO in 1980 because of substantial improvement on all fronts in question, including progress on reversing the double standard. In 1980 the Conference censured Czechoslovakia for discriminating against workers on the basis of their political beliefs and, over Soviet objections, strengthened mechanisms for supervising the implementation of conventions. We were able to promote the censure of Czechoslovakia again in 1983, the USSR was cited in 1981, and most importantly, investigations of the Polish case were opened which led to the release of a highly condemnatory Commission of Inquiry report in 1984. This report was justifiably critical of the Polish Government and the report was approved by the Governing Body over strong Soviet resistance. The Conference adopted another balanced human rights report, and it affirmed Israel's right to participate in ILO regional activities. In 1985, the organization once more rejected Soviet "reforms." It turned back a Nicaraguan effort to manipulate the Non-Aligned Group and to politicize the annual conference. Earlier this year, further Soviet attempts were defeated to undermine impartial review of reports of violations in individual countries. However, the Soviets show no intent to let up on their attacks on supervisory machinery.

We could not have achieved these improvements without the close cooperation of U.S. employers and workers. Tripartism constitutes the very essence of the ILO which sets it apart from all other organs of the UN system. It is the unique feature of tripartism, together with the ILO's mission of promoting workers' human rights and working standards around the world, which underlies the basic interest of the U.S. in the ILO. As we look at the full panoply of international organizations in the UN system, we now find the ILO in the forefront of those advancing U.S. political interests because of these special features--and it is these special features of the ILO that we are committed to preserving.

While there have been truly positive developments since our return to the ILO, as I have mentioned before, there have also been setbacks, and there are areas where we believe further improvement is necessary including further progress toward budget and program reform; further improvements toward getting rid of an unfortunate double standard with regard to labor rights violations in the Soviet bloc; and further progress toward reducing introduction of extraneous political issues and attacks on the United States by some in ILO debates.

With this as background I would like to address the question "Is there any linkage between U.S. influence in the ILO and our own record of ratification of ILO conventions?" I believe there is such linkage.

It is my view that the primary factor that led the ILO to turn around was that other members took seriously our withdrawal from the organization in 1977. They understood the implications of our withdrawal. We clearly demonstrated our determination not to participate until there were clear signs that the organization was prepared to resume its proper functions. The ILO took those steps and we returned, determined to use our influence to help the ILO continue to re-adjust its focus.

But our leverage is hampered by the fact that the U.S. has not improved its own record of ratification of ILO conventions over the past 30 years. It has provided our adversaries with ready-made propaganda ammunition. It fosters attitudes on the part of third countries to equate United States' actions and policies with those of our adversaries and ultimately it is used to excuse decisions in the Committee on the Application of Conventions and Standards to go easy on the Soviets in individual cases under review. It is my judgment that an improved ratification record would have served U.S. foreign policy interests better. More importantly, I believe a better record can help us in the future. Let me give some cases that point out the need for a stronger U.S. presence in the ILO.

We are open to the frequent charge -- and it comes not just from our adversaries -- that our defense of the ILO machinery is hypocritical because we ratify no conventions and are, therefore, not subject to the machinery's operations to the same extent as others. It is also charged that, because the U.S. does not ratify conventions we have no moral standing when urging the organization to take up the alleged transgressions of others. As a practical matter, because we have not ratified most ILO conventions we are barred by the ILO Constitution from bringing complaints against those who violate their obligations.

In response to these charges, we say that U.S. law and practice are in substantial compliance with ILO conventions. This argument is valid, but it does not defuse the charges against us brought about by our refusal to consider ratification of all but a few ILO conventions.

In fact, this approach conflicts with the assumptions under which we joined the ILO. The ILO's purpose is to raise labor standards around the globe through the process of adoption and ratification of conventions. Every member state has a moral and legal obligation to make a good faith effort to determine whether it can ratify conventions. But our behavior sends a message that ILO procedures don't apply to us. The message we send is--do as we say, not as we do.

There is also inconsistency between our failure to consider ratification of ILO conventions and the growing tendency in the Congress to refer to internationally recognized worker rights standards regarding freedom of association and forced labor in U.S. trade and aid legislation. These standards are compatible with the ILO conventions.

Our allies in the ILO who have stood squarely with us in turning back the Soviet offensive against the supervisory machinery have warned us that the Soviets intend increasingly to exploit our nonratification record as they continue to press their assault. Our allies see the U.S. nonratification record as a chink in our collective armor.

Moreover, at a time when the United States is in arrears in its funding for the ILO, U.S. ratification of ILO conventions consistent with Federal and State law would underscore U.S. interest in and support for the organization and help blunt Soviet criticism.

Mr. Chairman, during his testimony before the Senate Labor Committee's 1985 hearing on the ILO, Secretary Shultz urged that we should correct our approach by reopening the ledger on ratification, making a good faith effort to review more systematically and vigorously those conventions that we can ratify without contravening U.S. labor laws.

The Senate has before it President Reagan's two April 10, 1986 messages transmitting Conventions 144 and 147. We are by no means rushing into the ratification process without due deliberation and careful consideration. The Tripartite Advisory Panel on International Labor Standards (TAPILS) established in 1980 to make sure that the President's Committee would not recommend ratifying any convention that is inconsistent with Federal and State law has unanimously concluded that neither convention conflicts in any way with U.S. law or practice.

This is the first time in over 30 years that we have asked for ratification of a non-maritime convention. Convention 144 requires ILO members that ratify it to establish and maintain a mechanism to ensure effective tripartite consultations between governments, employers, and workers on matters relating to the ILO. This convention has some symbolically attractive features which render it a particularly appropriate vehicle with which to usher in our new posture of taking a fresh look at ILO conventions. First of all, the machinery called for by the convention is already in place. The President's Committee on the ILO and its subsidiary bodies, the working-level consultative committee on one hand and the TAPILS legal advisory panel on the other, are the very epitome of the tripartite consultation mechanism envisaged by Convention 144 for studying ILO issues and making recommendations regarding the ratification of conventions. Secondly, there is an additional advantage from the fact that the Soviet bloc countries have not ratified Convention 144, and by all rights, they shouldn't, because of its requirement that employers and workers enjoying the right of freedom of association be accorded equal footing with government in tripartite consultations.

It is most encouraging that past concerns and misunderstandings over the basic question of U.S. ratification of ILO conventions have been overcome by the reaching of an agreement in the Tripartite President's Committee establishing the ground rules to be followed in future consideration of U.S. ratification of ILO conventions as required by Article (5)(1)(c) of Convention 144. This agreement incorporates these principles:

That each ILO convention will be examined on its merits on a tripartite basis;

That if there are any differences between the convention and Federal law practice, these will be dealt with in the normal legislative process; and

That there is no intention to change State law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

Should Convention 144 be ratified, we believe it important that this understanding be included into the legislative record. Since Convention 144 reflects so strongly the living application of tripartism, it is all the more important to make clear to all concerned as to how the United States should proceed to ratify ILO conventions consistent with the tripartite concensus of the U.S. government, labor, and employers.

There is full agreement among the government, workers, and employers on Convention 147 which concerns minimum standards in merchant ships. Moreover, existing U.S. legislation, regulations, and industry practice are already in full compliance for the working and living conditions of seafarers.

Mr. Chairman, Secretary Shultz urged ratification of appropriate ILO conventions as in the foreign policy interest of the United States over two years ago in the Senate Labor Committee's 1985 hearings. During the past two years, government, labor, and business have resolved any lingering impediments to ratification of these two ILO conventions. Their ratification remains in the foreign policy interests of the United States, and we continue to support and urge ratification of Convention 144 and 147 now.

STATEMENT OF FRANK DROZAK
PRESIDENT OF THE SEAFARERS INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO

Mr. Chairman and Members of the Committee:

I am Frank Drozak, president of the Seafarers International Union of North America, AFL-CIO, which represents thousands of merchant seamen employed on American vessels sharing our nation's domestic waters and the international sealanes of the world. It is on their behalf that we take this opportunity to express our support for ILO Convention No. 147 Concerning Minimum Standards in Merchant Ships.

Merchant mariners worldwide share a common bond -- that of the brotherhood of the sea. Regardless of the capacity in which one sails, the life of a merchant seamen is as trying as it is rewarding. Under the best of circumstances the work is hard and the uncertainties of nature are a constant danger. The SIU believes that every human being employed in a shipboard capacity deserves the highest standards of safety and working environment. In a profession that conservatively suffers between one and two thousand fatalities and tens of thousands of serious injuries worldwide each year, it is evident that those high standards are not being applied universally. All too often we read about the inhumane conditions aboard substandard vessels. In many cases, life aboard these vessels is an exercise in cruelty. Filthy living conditions, inadequate diet, grueling physical labor, little pay and lax safety standards, which are unacceptable to any advanced civilization, are often commonplace aboard these vessels.

The SIU, therefore, welcomes ratification of ILO Convention No. 147 since it constitutes an acceptable, albeit minimal, international standard for employment of seafarers on vessels engaged in maritime transport. The need for an international instrument on the maintenance of minimum standards on vessels cannot be disputed. Worldwide cases of abuse and criminal activity by unscrupulous shipowners who engage seafarers from countries with subsistence economies at very low wage rates and few other social advantages are widespread. The sad reality of such incidents is that seafarers who make up these third world crews refuse or are reluctant to bring such abuses to the forefront. They seek no remedies to their arduous living and working conditions fearing instead the danger of personal retaliation or being identified and blackballed, precluding future employment aboard any vessel.

Cognizant of these abuses, the labor movement has attempted to bring these problems to light and to sharpen public and official focus on the issue. For example, the International Transport Workers Federation has inaugurated a vessel inspection program worldwide, visiting vessels to determine crew conditions and correct, if possible, instances of mistreatment. However, as part of the private sector, we can do only so much to assist exploited seamen; effective and expeditious action by governments to secure safety provisions and conditions of life and employment of crews for substandard vessels in line with the standards of traditional maritime countries is the most desirable course. Ratification of Convention 147 would certainly be a first step in a long journey to root out and eradicate the basic problems of crew abuse, incompetency, lack of safety standards and questionable conditions of employment on substandard vessels owned and operated by individuals who seek to maximize profits at the expense of the safety of life or limb of their crews.

However beneficial the minimum standards of the Convention will be, it must be realized that they were adopted by the ILO eleven years ago. During this time, the depressed state of the industry has led to intensified competition as vessel owners and operators seek registries with less formalized standards of safety and employment. Cost savings achieved by ignoring standards at sea is a certain formula for human misery, unreliable crews and lost ships. Well-trained professionals will not accept such conditions of employment; that is the reason that most substandard vessels or vessels under fly by night registries are often manned by unskilled, poverty stricken nationals of developing countries, for whom a job at sea appears to represent a chance for betterment, but which in fact often represents further impoverishment. Therefore, a vehicle is needed to update and expand the minimal standards and ensure control of substandard vessels with regard to seaworthiness, manning and accident prevention. Efforts should continue on the international level in such forums as the ILO to afford the worldwide mariner a safe working environment and fair conditions of employment.

The close relationship between safety at sea and conditions of employment cannot be underestimated. Vessels registered under traditional maritime flags have lower loss rates because of higher training standards and government enforced operating regulations. The stark contrast between the limited losses among traditional maritime nations with high manning and safety standards and acceptable conditions of employment and the high-loss record of convenience registries with no crew restrictions and little or no safety and training enforcement is perhaps the most compelling reasons for ratification of minimal international standards as found in ILO Convention 147.

Aside from the important fact that the Convention exacts the establishment and enforcement of state laws and regulations to improve employment conditions on merchant ships, the Convention further encourages ratifying members to respond to complaints which do not conform to Convention standards on vessels calling in their ports or in their territorial waters. Article 4 of the Convention instructs ratifying members to "take measures necessary to rectify any conditions on board which are clearly hazardous to safety and health."

The SIU believes that this element of port state control is indeed a focal point of this convention and one with which the SIU is in agreement. It appears that Article 4 strikes a balance between the powers of the flag country and those of the port country. Through legal or governmental channels and the basic standards contained in the document, the Convention will deter unprincipled activities by shipowners and serve to improve conditions for seamen worldwide. Without such a vehicle for enforcement, the SIU believes that the Convention would be meaningless.

The Convention is indeed a modicum of relief for the abused and unfortunate seaman who finds himself aboard a substandard vessel; however, as noted by a participant in the 1976 ILO conference, the convention is a "skeleton, without flesh, blood or muscle." It is evident that on an international level much still remains to be accomplished to ensure the merchant mariner from a developing third world country fair compensation for work performed and as safe a working environment as possible. We would hope that the United States government will take an active role in efforts to improve the fate of this merchant mariner in the international arena. Failure to do so will represent an injustice not only to American seamen but to seamen worldwide.

The SIU respectfully requests that the Committee favorably report ILO Convention 147 to the floor for ratification by the Senate. Thank you.

Statement of the
Seafarers International Union of North America, AFL-CIO

Re: ILO Convention 147
Concerning Minimum Standards in Merchant Ships

SUMMARY

The SIU welcomes ratification of ILO Convention No. 147 since it constitutes an acceptable, albeit minimal, international standard for employment of seafarers on vessels engaged in maritime transport. The need for an international instrument on the maintenance of minimum standards on vessels cannot be disputed. Worldwide cases of abuse and criminal activity by unscrupulous shipowners who engage seafarers from countries with subsistence economies at very low wage rates and few other social advantages are widespread.

Cost savings achieved by ignoring standards at sea is a certain formula for human misery, unreliable crews and lost ships. Well-trained professionals will not accept such conditions of employment; that is the reason that most substandard vessels or vessels under fly by night registries are often manned by unskilled, poverty stricken nationals of developing countries, for whom a job at sea appears to represent a chance for betterment, but which in fact often represents further impoverishment.

The close relationship between safety at sea and conditions of employment cannot be underestimated. Vessels registered under traditional maritime flags have lower loss rates because of higher training standards and government enforced operating regulations. The stark contrast between the limited losses among traditional maritime nations with high manning and safety standards and acceptable conditions of employment and the high-loss record of convenience registries with no crew restrictions and little or no safety and training enforcement is perhaps the most compelling reasons for ratification of minimal international standards as found in ILO Convention 147.

The SIU believes that the element of port state control contained in Article 4 of the Convention is indeed a focal point of this convention and one with which the SIU is in agreement. Without such a vehicle for enforcement, the SIU believes that the Convention would be meaningless.

Testimony of
James D. Burge
Corporate Vice President, Motorola Inc.
on behalf of the
National Assocation of Manufacturers
on the
Ratification of International Labor Organization
Convention No. 144 & No. 147
before the
Committee on Foreign Relations
United States Senate
October 21, 1987

Mr. Chairman and members of the Committee, I am James D. Burge, corporate vice president and director of employment regulatory affairs for Motorola Inc. I appear before you on behalf of the National Association of Manufacturers as a member of its Labor Relations Committee and Subcommittee on Multinational Labor Relations.

Introduction

The NAM appreciates the opportunity to participate in this hearing and contribute to the Committee's deliberations regarding ratification of International Labor Organization (ILO) Convention No. 144 and No. 147, which the President last year submitted for advice and consent of the Senate (Treaty Documents 99-20 and 99-21, dated April 10, 1986). Convention No. 147 concerns minimum maritime standards which in general would improve employment conditions, including health and safety, on merchant ships. Convention No. 144 requires each ratifying country to establish tripartite administrative procedures at the national level to promote the implementation of international labor standards. It further requires the on-going review of previously unratified conventions.

My testimony focuses principally on Convention No. 144 and the significant reservations, NAM believes, that are held by the business community at large concerning it's ratification. Before proceeding, however, it should noted for the record that I served as Advisor-U.S. Employer Delegation, to the Committee on Employment Promotion and Social Security at this summer's 73rd Session of the ILO. I will be returning to Geneva in two days to continue work on revision of relevant standards. Thus, in addition to representing the broad spectrum of views held by NAM members, my comments also reflect personal experiences and those of my colleagues in working within the ILO framework.

The United States joined the ILO in 1934 and since that time has properly taken a deliberate approach to the ratification of ILO conventions. In the intervening years, the United States has ratified only seven of 162 ILO conventions. The most recent was in 1953 and all but one deals with maritime matters. The seventh was a consequence of the United Nations' successorship as parent body of the ILO when the League of Nations was dissolved. None of these conventions involved national labor policy related to collective bargaining or substantive areas of domestic labor law.

Convention No. 144

Convention No. 144 would put the United States in the position of having to consider the implications of its ratification, i.e., additional conventions or labor standards will have to be reviewed for potential ratification. Convention No. 144 does not stand alone. It is within this context that major reservations need to be reviewed with you. The Committee's deliberations set the stage as to whether basic U.S. labor law is to be altered in a significant way as a consequence of Convention No. 144's ratification. NAM's reservations are based on the following:

- **ILO conventions are not universally accepted worldwide.** Although 162 conventions have been adopted by the ILO since 1919, only six countries of the 158 member states have ratified more than 50% of the conventions. Seventy-seven per cent, or 121 countries, have ratified fewer than 30% of ILO conventions. Forty-one countries, or 26% of ILO member states, have adopted 9% or fewer conventions. This record of ratification hardly supports the characterization that ILO conventions are universally accepted in the context of these hearings or that they constitute "internationally recognized worker rights" as some have suggested in proposed trade legislation.

- **ILO conventions, in many cases, conflict significantly with U.S. labor law and practice.** For example, two labor standards frequently referred to as "cornerstone conventions," Convention No. 87 and No. 98, address freedom of association, the right to organize and collective bargaining. A 1984 study conducted by the employer member of the Tripartite Advisory Panel on International Labor Standards cites how ratification of these two conventions would modify U.S. labor law. They would:

- Alter a fundamental principle of U.S. labor law which makes union rights derivative from those of employees, by subordinating employee right to those of labor organizations;
- Broaden the classes of employees entitled to National Labor Relations Act type protection to include supervisors, agricultural workers and public employees;
- Revoke or modify substantial parts of the Landrum-Griffin Act, particularly with respect to election procedures and prohibitions against persons with criminal records from holding union office;
- Repeal the employer free-speech provision under §8(c) of the NLRA;
- Limit restrictions on the right to strike, including secondary boycotts, in both the public and private sectors;
- Prohibit Congress from enacting legislation restricting the participation of Communist Party members or members of other subversive groups in labor organizations; and
- Impose collective bargaining in some state and local jurisdictions and expand the scope of bargaining in the Federal sector and state and local jurisdictions.

These differences between U.S. labor law and ILO convention No. 87 and No. 98 also illustrate a problem common to almost all ILO conventions except those dealing with maritime and Convention No. 144. That is, under the Tenth Amendment of the United States Constitution, ratification of most conventions would require legislative action by the states as well as the federal government.

o **Convention No. 144 calls for tripartite consultation at the national level,** a process that already exists in the United States in the form of the President's Committee on the ILO. It is comprised of the Secretaries of Labor, State and Commerce; Assistant to the President for National Security Affairs; and presidents of the AFL-CIO and U.S. Council for International Business, Employee and Employer Representatives to the ILO, respectively. Convention

No. 144 also calls for review of why a member state, such as the United States, does not ratify other labor standards. While this convention does not conflict with U.S. labor law and practice, other conventions do. Is it the intention of Congress to ratify Convention No. 144, then adopt others which would alter federal and possibly state labor law in very basic ways?

Influence in the ILO

Mr. Kirkland and others assert that ratification of conventions is essential if the United States is to have significant influence in the ILO. We find little support for that contention. I can assure you that my associates and I who have had personal experience with the ILO find no reason to believe the record of U.S. ratification reduces our ability to influence in any way. Since returning to the ILO in 1980, the United States has had a considerable impact. By exercising our economic muscle--the United States contributes 25% of the ILO budget--we have been able to direct the ILO back to its basic goals and away from the political polemics that initially caused United States withdrawal in 1977. Examples of the positive U.S. influence during the past few years include:

- Affecting ILO budget process, limiting monies budgeted and directing where and how it is spent;
- Prevented, in concert with many other countries, a major, multi-year effort by the U.S.S.R. to change the ILO structure/process in favor of Eastern Bloc countries;
- In concert with other countries, forced a country such as Poland to have its practices reviewed by the ILO and, in essence, condemned;
- Substantially altered the ILO Annual Conference agendas away from the inflammatory, sweeping issues inimical to U.S. interests to subjects more realistic, practical and likely to benefit countries and workers in need;
- Gained appointment of a U.S. representative, David Taylor, as Deputy Director General;
- Led a successful effort involving many member states to prevent the ILO from becoming a broad-ranging tribunal reviewing "multinational cases" submitted by various parties to the ILO; and
- Prevented over or under-politicization during annual ILO Conferences, e.g., Middle-East.

Based on the foregoing, we are not inclined to view ratification as requisite to effectiveness in achieving United States' policy objectives. And this position is, we believe, bolstered when one examines the record of ratification or more accurately, non-ratification of many conventions by a majority of countries as noted previously.

Having examined the question of ratification of ILO Convention No. 144 from a variety of perspectives, we find little benefit accruing to the United States and substantial risk, e.g., increased pressure to adopt "cornerstone conventions" that conflict fundamentally with U.S. labor law and practice.

NAM Action

Concurrent with action by the President's Committee, NAM was requested by its membership to examine the consequences accruing from ratification on U.S. employment and global competitiveness. One result of this inquiry was adoption of the following official policy on the general issue of ratification:

> "The National Association of Manufacturers considers that the need for and the value of U.S. ratification of International Labor Organization (ILO) conventions has not been demonstrated. NAM also considers that the review of individual conventions involves complex issues such as usefulness to U.S. economic and social conditions, employee welfare, and business competitiveness -- especially that of small/medium-sized companies. Accordingly, NAM sees the necessity for the following criteria, at a minimum, to be satisfied preceding ratification by the U.S. of any ILO convention:
>
> "1. Each convention will be examined on its merits on a tripartite basis and further, to determine if there are differences between U.S. federal and state law and practice and the convention's provisions;
>
> "2. No ILO convention which conflicts with federal law and practice will be ratified unless and until federal law and practice is conformed to the convention in advance and through the normal legislative process; and
>
> "3. No ILO convention which conflicts with state law and practice will be ratified unless and until the conflicts between the convention and state law and practice are resolved.

"NAM will oppose ratification if these minimal criteria are not fulfilled and the need and value of the convention is not demonstrated."

The policy statement, adopted by NAM's Board of Directors in May 1986, was the first step in development of an NAM position concerning the ratification of conventions that are the subjects of today's hearings.

Throughout the balance of 1986 and into early 1987, NAM's Subcommittee on Multinational Labor Relations worked on a position statement concerning Convention No. 144 that reflected member reservations on ratification and, at the same time, buttressed the U.S. Employer Representative position. In anticipation of these hearings, NAM's position was summarized in an April 14, 1987 letter to Chairman Pell (copy attached).

NAM's principal concern, like the U.S. Council's, has less to do with Convention No. 144 per se than with the increased leverage that ratification would provide to those who want the United States to adopt conventions, some of which conflict significantly with U.S. and state law and practice, e.g., freedom of association, collective bargaining and forced labor.

We believe this position is consistent with that taken by the U.S. Council for International Business which has also expressed concerns but indicated it would "not oppose" ratification, leaving it to business organizations such as the NAM to articulate in further detail for the Committee's consideration.

Most fundamental to NAM's concerns, however, is the adverse effect that ILO conventions might have on the United States economy, productivity, job growth, labor cost and labor market flexibility. All of these are antithetical to the Nation's goals to ensure that we are globally competitive and Americans enjoy an increased standard of living. The current situation in which Western Europe finds itself--double-digit unemployment, failed efforts in job creation and anemic growth-- are symptomatic of the ideology embodied in many ILO conventions. Witness, for example, the OECD's and European Community's attempts to move away from social legislation and attendant labor market rigidities they feel have contributed to their current economic malaise.

President's Committee

The President's Committee recommended in late 1985 that Conventions No. 144 and 147 be sent by the President to the Senate for its advice and consent. There was unanimity on the maritime standard but not on tripartite consultation, even though it does not conflict with U.S. law and practice. Ambassador Katz persuaded other committee members, including Mr. Kirkland, to adopt three conditions that would govern the future review of conventions and be incorporated in the package sent to the Senate:

1. Each ILO convention will be examined on its own merits;
2. If there are any differences between Federal law and practice, these will be dealt with in the normal legislative process; and
3. There is no intention to change State law and practice by Federal action, and the examination will include possible conflicts between Federal and State law.

Ambassador Katz is to be commended for having achieved consensus on these three conditions and NAM agrees with him that they are critical to ensuring that any United States action is not misinterpreted. These understandings were included in the Executive Branch letter seeking advice and consent of the Senate on ratification of Convention No. 144 and also incorporated in the NAM policy statement discussed earlier.

Conclusion

In summary, we suggest that your deliberations are not so much about Convention No. 144 but more about three key points:

1. Will passage of ILO conventions enhance U.S. competitiveness, enterprises of all sizes, and the economy as a whole?
2. Does Congress want to fundamentally alter U.S. labor law through adoption of a series of ILO conventions, initiated by ratification of No. 144?
3. Will passage of Convention No. 144 embue the United States with more influence in the ILO?

We suggest the answer to each question is "no" and that no need has been demonstrated for ratification of Convention No. 144 or others with the exception of those dealing with maritime matters.

It is not as though the United States exists without a sound sytem of labor law or lacks an adequate mechanism for tripartite consultation at the national level. U.S. labor law and practice has evolved over more than fifty years to provide an equitable balance to the rights and obligations of employers and employees and the mechanisms presently in place clearly provide for effective consultation.

The question before the Committee, rather, is whether the impetus for change is based on the fact that U.S. law and practice does not perfectly conform with these conventions? If Convention No. 144 is ratified, will the same rationale be used to advance adoption of additional labor standards?

Final disposition of Convention No. 144 rests with this Committee and the Senate in providing advice and consent. Should the decision be to ratify this convention in light of the concerns I have tried to articulate and that were included NAM's letter to Chairman Pell, then we urge that the instrument depositing the convention include understandings. While our preference would be the understandings set forth in NAM policy, we would be comfortable with those agreed to by the three members -- employer, employee and government representatives -- of the President's Committee. Absent inclusion of the understanding, NAM must oppose ratification of ILO Convention No. 144.

NAM appreciates the opportunity to present this testimony and I would be pleased to respond to any inquiries the Committee may have.

ATTACHMENT

NAM
National Association
of Manufacturers

ALEXANDER B. TROWBRIDGE
President

April 14, 1987

The Honorable Claiborne Pell
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The President last year submitted for the advice and consent of the Senate on ratification of two International Labor Organization Conventions (Treaty Documents 99-20 and 99-21, dated April 10, 1986). The National Association of Manufacturers wishes to express preliminary observations in advance of the Committee's deliberations and highlight the significant reservations concerning ratification of ILO conventions that are held by the business community at large.

Concurrent with transmittal of a recommendation from the President's Committee on the ILO ("President's Committee") that the United States ratify ILO Convention No. 147 (minimum maritime standards) and No. 144 (tripartite consultation to promote implementation of international labor standards), NAM was requested by its membership to examine the consequences of ratification on U.S. employment and global competitiveness.

One result of this inquiry, that included considerable attention to small business which comprises three-quarters of our membership, was adoption of the following official policy on the general issue of ratification by NAM's Board of Directors:

> The National Association of Manufacturers considers that the need for and the value of U.S. ratification of International Labor Organization (ILO) conventions has not been demonstrated. NAM also considers that the review of individual conventions involves complex issues such as usefulness to U.S. economic and social conditions, employee welfare, and business competitiveness -- especially that of small and medium-sized companies. Accordingly, NAM sees the necessity for the following criteria, at a minimum, to be satisfied preceding ratification by the U.S. of any ILO convention:
>
> 1. Each convention will be examined on its merits on a tripartite basis and further, to determine if there are differences between U.S. federal and state law and practice and the convention's provisions;
>
> 2. No ILO convention which conflicts with federal law and practice will be ratified unless and until federal law and practice is conformed to the convention in advance and through the normal legislative process; and
>
> 3. No ILO convention which conflicts with state law and practice will be ratified unless and until the conflicts between the convention and state law and practice are resolved.
>
> NAM will oppose ratification if these minimal criteria are not fulfilled and the need and value of the convention is not demonstrated.

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The Honorable Claiborne Pell
April 14, 1987
Page Two

NAM is not persuaded that ratification or non-ratification of Convention No. 144 and 147 would substantially affect the United States' status in the ILO or world community. Since returning to the ILO in 1980, the United States has had a considerable impact on the ILO and we have been able to direct the ILO back to its basic goals and away from the political polemics that caused the United States to withdraw in 1977.

We are also greatly concerned that ratification of ILO Convention No. 144 will be interpreted as a change in long-standing U.S. practice of not ratifying non-maritime standards. This could result in increased pressure to adopt other conventions, some of which depart radically from U.S. federal and state law and practice. The ILO standard setting process is a questionable basis for legislating U.S. labor law and results in conventions often not ratified by a majority of countries. We enclose as an attachment a comparative analysis of the disparities of U.S law and selected ILO conventions for your information.

Changes embodied in ILO Conventions could well impede U.S. economic growth, productivity, job creation and labor market flexibility. All of these consequences are antithetical to the Administration's and Congress' goals to ensure that the United States is globally competitive in the next decade. Certainly, Europe's current situation of double-digit unemployment, an abysmal record of job creation and low growth are symptomatic of the ideology embodied in many of the ILO conventions.

Summarizing, NAM is not convinced that ratification of ILO conventions carries with it any benefit to the United States, whether one looks at it from the perspective of employer or employee. We believe that it is from these perspectives that ratification must be examined.

Having stated our concerns in a preliminary fashion, we wish to offer a suggestion that would, in part, allay reservations expressed in the foregoing. In his letter of transmittal on Convention No. 147, the President recommended that five understandings be included in the United States instrument of ratification, should the Senate give its advice and consent. This would be consistent with past U.S. practice concerning ILO conventions and NAM endorses its use to preclude misinterpretation.

In the same vein, we would encourage the Committee to direct inclusion of understandings in the instrument depositing the Convention No. 144. While our preference would be the understandings from NAM policy, we would be comfortable with the understandings agreed to by the three members -- employer, employee and government representatives -- of the President's Committee, which is included as Attachment II. Absent the inclusion of these understandings, at the very least, NAM will vigorously oppose ratification of ILO Convention No. 144.

The National Association of Manufacturers looks forward to the opportunity to participate in the Committee's deliberations on ratification of ILO Convention No. 144 and No. 147 and to your reply. If we may provide further information, please contact me.

Sincerely,

AB Trowbridge

Alexander B. Trowbridge
President

Enclosures

ADDITIONAL QUESTIONS ASKED BY SENATOR MOYNIHAN FOR SECRETARY BROCK AND RESPONSES

Q-1 -- Article 5(1)(c) of Convention No. 144 calls for consultations on the reexamination of unratified ILO conventions to consider what measures might be taken to promote their ratification. Is there agreement between government, labor and management on how this provision should be interpreted?

A-1 -- Yes, there is agreement between government, labor and management on how Article 5(1)(c) will be interpreted. As I discuss at some length in my prepared statement, Article 5(1)(c) of Convention 144 led the tripartite President's Committee on the ILO to develop three ground rules for our procedures regarding future ratification of ILO conventions.

These rules are designed to put to rest fears that the ratification of other ILO standards might be used to bypass the normal legislative process to change U.S. domestic laws. The President's Committee unanimously agreed that:

- Each ILO convention will be examined on its merits, on a tripartite basis;
- If there are any differences between the convention and Federal law and practice, these will be dealt with in the normal legislative process;
- We do not intend to use ratifications of ILO conventions to change State laws and practices; and our analysis of ILO conventions will include possible conflicts between Federal and State law that ratification might cause.

It may also be useful to point out that the U.S. Government has for many years undertaken tripartite consultations regarding ILO conventions that we have not ratified. To encourage ratification, Article 19 of the ILO Constitution requires periodic law and practice reports regarding conventions that a Member State has not ratified. When we prepare such reports, we always send them to the appropriate representative organizations of labor and business for comments. In addition, labor and business may also submit comments directly to the ILO.

Q-2 -- What are the major benefits gained by the U.S. by ratifying this Convention?

A-2 -- My October 1, 1987 testimony, the September 11, 1985 testimony of Secretary of State George Shultz, and the October 1, 1987 testimony of Anthony Freeman, Special Assistant to the Secretary and Coordinator, International Labor Affairs, Department of State, all discuss at length the major benefits gained by the U.S. by breaking out of our now outdated tradition of ratifying only a small handful of ILO maritime conventions.

In addition, U.S. ratification of this particular ILO convention especially serves U.S. interests abroad. As we have already noted, this convention requires that governments establish and maintain a mechanism to ensure effective tripartite consultations with workers and employers on ILO matters.

Although Convention 144 is therefore merely a procedural convention, it has become both a symbol and a test of whether a Member State of the ILO pays more than lip service to tripartism--a basic principle of the Organization.

In fact, tripartism is the most distinctive feature of the ILO. And genuine tripartism requires autonomy. This is true in the ILO, where the Employer and Worker Groups zealously guard their independence from the Government Group. It is also true in ILO Member Countries, where genuine tripartism requires free trade unions and free employer associations.

That is why the Soviets voted against adoption of this convention at the 1976 ILO Conference, and that is why they have said that they cannot ratify it. They claim that ratification of Convention 144 would violate their national sovereignty.

U.S. interests would therefore be particularly well served by our ratification of this convention. Despite its procedural nature, U.S. ratification of Convention 144 would demonstrate to the world at large our commitment to free trade unions and free enterprise at home.

Q-3 -- Will implementing legislation be necessary to give effect to the provisions of this treaty?

A-3 -- Ratification of ILO Convention 144 would not require any new legislation to implement its terms. Although Convention 144 is not self-executing, the Executive Branch, the AFL-CIO, and the U.S. Council for International Business have determined that, by virtue of existing U.S. law and practice, the United States has already given full effect to, and is in full compliance with, the terms of this Convention. Therefore, if ratified, Convention 144 would not require further implementing legislation.

Q-4 -- Will there be any monetary costs incurred by the U.S. Government by ratifying this Convention?

A-4 -- Because U.S. laws, regulations and practices already conform in every detail with Convention 144, no monetary costs would be incurred by ratification of this Convention.

Q-5 -- If you have not already done so in your testimony, could you briefly describe the current U.S. tripartite consultative process? Could you tell us how it works?

A-5 -- Since 1980, tripartite consultations on ILO matters occur within the formal structure of the President's Committee on the ILO. The Committee's primary functions are to monitor and assess the work of the ILO, and -- to the extent possible, given the autonomy of the worker and employer representatives -- develop a coordinated U.S. policy on ILO issues.

This Committee, established by the President as a Federal Advisory Committee, is chaired by the Secretary of Labor and includes the Secretaries of State and Commerce, the President's National Security Advisor, the President of the AFL-CIO, and the President of the U.S. Council for International Business.

Our tripartite committee meets as warranted by the issues; in recent years, about every other year. One of its principal tasks is development of a set of tripartite U.S. objectives in the ILO. These objectives, which are periodically reviewed and updated, guide the work of the Committee's two subgroups, the tripartite Consultative Group and the Tripartite Advisory Panel on International Labor Standards (TAPILS).

The staff-level Consultative Group, which is chaired by the Director of the Department of Labor's Office of International Organizations and includes representatives of the Departments of State and Commerce, as well as the AFL-CIO and the U.S. Council for International Business, meets both regularly and frequently. This group provides technical advice on U.S. Government positions on a wide array of agenda items for ILO conferences and meetings and reviews proposed U.S. Government initiatives in the ILO.

TAPILS is chaired by the Solicitor of Labor, and consists of legal advisers from the Departments of Labor, State, and Commerce, the AFL-CIO and the U.S. Council. TAPILS' main function is to determine the degree of U.S. compliance with selected ILO conventions and to examine the impact of their ratification on existing and developing domestic labor law. TAPILS submits its conclusions, and any minority views, to the President's Committee. Thus, for example, TAPILS fulfills one of the functions described in Article 5 of Convention 144, namely, the re-examination at appropriate intervals of unratified conventions. At present, it is analyzing ILO Convention 105, on forced labor, and Convention 160, on labor statistics.

TAPILS has also become the principal vehicle for reviewing the many U.S. law and practice reports required by the ILO under Articles 19 and 22 of the ILO Constitution. This ensures that U.S. Government reports to the ILO on both ratified and unratified conventions are subjected to tripartite review. TAPILS would also be the appropriate body to study and make recommendations regarding any denunciation of ratified conventions, for which Convention 144 also requires tripartite consultation.

Q-6 -- In 1977, the U.S. withdrew from the ILO because we believed fundamental ILO principles were being undermined to a point that was inconsistent with our continued participation. We rejoined in 1980. Since 1980, how has the ILO advanced U.S. political interests? Could you give us some examples?

A-6 -- Since the U.S. rejoined the ILO in 1980, U.S. political interests have been advanced in that organization in a number of ways. U.S. participation in the ILO gives us an opportunity to advocate the American economic, social, and political system, and to stress the advantages of a pluralistic society as compared to communist and other totalitarian systems. The ILO serves as a channel to help less developed countries advance in social and economic directions compatible with U.S. security and ideals. It serves as a multilateral technical assistance agency, with an American presence, in the field of human resources development. It is a platform to promote free labor movements and the free market system in pluralistic societies. The unique tripartite system of the ILO -- with equal voting weight for representatives of governments, employers, and employees -- is a built-in mechanism that promotes U.S. and Western values. The ILO also provides information about new foreign labor and manpower policies and programs of potential use in the United States.

In addition, the ILO plays a major role in promoting workers' rights. Issues such as freedom of association, the right to bargain collectively, forced labor, child labor, and discrimination in employment are workers' rights which have been of concern to the ILO for many years and which are also in the political interests of the U.S. ILO efforts to undertake impartial investigations of human rights violations in Eastern Europe have opened a new chapter in the ILO's human rights program -- one which the United States promotes actively.

In 1980 the ILO Conference censured Czechoslovakia for discriminating against workers on the basis of their political beliefs (violation of Convention 111) and, over Soviet objections, strengthened mechanisms for supervising the implementation of conventions. The USSR was cited for long-standing problems in applying Convention No. 87, and Czechoslovakia was censured once again in 1983. Most importantly, ILO investigations of the Polish trade union situation were opened which led to the release of a highly condemnatory Commission of Inquiry report in 1984. This report was justifiably critical of the Polish Government and was approved by the Governing Body over strong Soviet resistance. In 1983 and 1984 the Conference adopted balanced reports on the application of standards, affirmed Israel's right to participate in ILO regional activities, and, in 1985, turned back a Nicaraguan effort to manipulate the Non-Aligned Group and to politicize the Conference. Since 1983, the Organization has rejected various Soviet assaults on its human rights supervisory machinery -- disguised as efforts to "reform" the machinery -- which this year were aimed at undermining the impartial review of reports of violations in individual countries by the Committee of Experts.

Q-7 -- **Has the ILO rid itself of its double standard with regard to labor and human rights violations in the Soviet bloc?**

A-7 -- The double standard was one of the key issues which led to U.S. withdrawal from the ILO in 1977. When we returned in 1980, it was on the basis that there had been significant improvements in the situation, not that the ILO had completely rid itself of the double standard. Since then there have been further improvements, along with some backsliding. Overall, it is probably fair to say that there is a new willingness in the ILO to honestly pursue human rights violations in the Soviet bloc.

The most dramatic and controversial example of the ILO's new vigor is that of Poland. In fact, the ILO's supervisory machinery has been so effective in this case, that the Soviet bloc has mounted a campaign to discredit and undermine it.

The ILO began investigating the Polish trade union situation immediately following the declaration of martial law in late 1981. The Government of Poland totally refused to cooperate with the investigation, labeling it unwarranted interference in sovereign internal affairs.

In 1984 the ILO issued a report which rather forcefully criticized the Government of Poland for actions taken against Solidarnosc and its members as well as flaws in its trade union legislation. The Government of Poland responded by filing notice of its intent to withdraw from the Organization. In November 1986 Poland extended its period of notice for an additional year -- until November 1987 -- and participated in the 1987 Conference. Poland's final decision on its status in the Organization is due soon. In the meantime, the ILO continues to monitor the Polish trade union situation. In fact, Poland's participation in the ILO Conference this year for the first time since 1982 permitted a full discussion of the case in the Conference Committee on the Application of Conventions and Recommendations (CACR).

The ILO also censured the USSR in 1981 for problems in applying Convention No. 87, and Czechoslovakia in 1980 and 1983 for violations of the employment discrimination convention (No. 111). In 1983 the Organization leveled a blanket criticism against all communist countries for not adhering to ILO freedom of association standards. More recently, Soviet bloc members have attempted to avoid ILO examination of egregious human rights cases by failing to appear as requested before the CACR. (If a government does not appear before the CACR, the Committee cannot discuss the substance of the case.) However, the 1987 CACR adopted new rules which inhibit governments from boycotting CACR discussions of their violations of ILO standards. As a result of the new rules, a number of governments which had previously used the boycott tactic this year appeared before the CACR, including Romania and Nicaragua.

Q-8 -- Have we been successful in holding down the ILO budget? How many times since 1980 have we voted against a proposed ILO budget?

A-8 -- The United States has pursued a generally successful effort in holding down the ILO budget in real terms, particularly in view of the appreciation of the Swiss franc by over a third against the U.S. dollar. Since returning to the ILO in 1980, the USG delegation abstained on the proposed 1982-83 budget and abstained again on the proposed 1984-85 budget. In large part as a result of our own pressures for budgetary restraint, the USG delegation was able to join a consensus on the 1986-87 proposed budget. The USG delegates joined the employers' and workers' delegates in voting in favor of the proposed 1988-89 budget. We chose to vote in favor for several reasons. The Director General acted on his commitment to budget and program reform by making several cuts in the 1988-89 budget, which now shows negative program growth (-0.6%). Moreover, the appreciation of the Swiss franc makes necessary higher levels of support by all members. Our policy, as you know, was zero net program growth and a significant absorption of non-discretionary cost increases.

Q-9 -- Have we been successful in restraining members from introducing extraneous political issues into the ILO's debate?

A-9 -- One of the factors that impelled us to leave the ILO in 1977 was our concern that too many members were using the ILO as a political forum to pursue issues irrelevant to the ILO's mission. The U.S. returned to the Organization in 1980 in part because we believed that there had been significant improvement in this area. While attempts to introduce non-productive political issues continue, they have definitely been muted, and the U.S. has made ILO leadership and the entire ILO body aware of the importance of throttling such activity. We have obtained agreement to a screening process to screen out unacceptable resolutions in the Resolutions Committee. In 1982, the ILO Conference did not act on a politically motivated anti-Israel resolution. The Organization, over the past few years, has turned a deaf ear on a sustained Soviet effort to "reform and democratize" -- in reality to politicize and thus weaken -- ILO supervisory machinery. It turned back a Nicaraguan effort to manipulate the Non-Aligned Group and to politicize the Annual Conference through the introduction of a resolution against the U.S. trade embargo. At the most recent conference (June 1987), anti-Israel attacks were absent or muted, and there was a minimum of introduction of extraneous political issues.

Q-10 -- I believe these would be the first ILO treaties to be ratified since 1958. Has our failure to ratify ILO treaties (only 7 out of 160-plus conventions) undermined our position in that organization vis a vis the Soviet Union? Why haven't we ratified more conventions?

A-10 -- The last time the United States ratified an ILO convention was in 1953, when we ratified Convention 74, regarding the certification of able seamen.

Over the years, our poor ratification record has certainly eroded -- but not, I think, undermined -- our position in the ILO, particularly vis a vis the Soviet bloc's continuing assault on the integrity of the ILO's unique supervisory machinery for assessing Member States' compliance with ILO standards and its fundamental principle of tripartism. Secretary Shultz addressed this issue at some length in his September 11, 1985 testimony before the Senate Committee on Labor and Human Resources, as did both I and Mr. Anthony Freeman, Special Assistant to the Secretary and Coordinator, International Labor Affairs, Department of State, in our October 1, 1987 testimony before the Senate Committee on Foreign Relations. My October 1, 1987 testimony before this Committee similarly addresses the issue of why we have not ratified more ILO conventions.

Q-11 -- What are the major challenges facing the U.S. within the ILO?

A-11 -- Major challenges include:

- To avoid erosion of U.S. influence and standing in the Organization stemming from the U.S. budget crisis and arrearages in our payment of assessed contributions.
- To counter Soviet attempts to undermine basic ILO principles.
- To preserve the integrity of the ILO's human rights program, supervisory machinery, and tripartism.
- To assure that the Organization concentrates on political and economic issues within its mandate.
- To assure an appropriate number of U.S. citizen professional employees in ILO positions in the Headquarters and in the field.

Q-12 -- Will ratification of these two ILO conventions assist you in taking on these challenges?

A-12 -- Ratification of these two ILO conventions will definitely bolster our ability to meet the challenges facing us within the ILO. Currently, our leverage is hampered by the fact that the U.S. has not improved its own record of ratification of ILO conventions over the past 30 years. It has provided our adversaries with ready-made propaganda ammunition. We are open to the frequent charge -- and it comes not just from our adversaries -- that our defense of the ILO machinery is hypocritical because we ratify no conventions and are, therefore, not subject to the machinery's operations. It is also charged that because the U.S. does not ratify conventions we have no moral standing when urging the Organization to take up the alleged transgressions of others. As a practical matter, because we have not ratified most ILO conventions we are barred by the ILO Constitution from bringing complaints against those who violate their obligations.

U.S. ratification of these two conventions would send a strong signal that we are willing to "play by the rules of the game" and bolster our effectiveness to counter the assault by the Soviets and their allies on ILO human and workers rights supervisory machinery and its unique tripartite system. Moreover, at a time when the United States is in arrears in its funding for the ILO, U.S. ratification of ILO conventions consistent with Federal and State law would underscore U.S. interest in and support for the Organization and help blunt Soviet criticism.

Q-13 -- Will Convention No. 147 preempt any State or Federal laws?

A-13 -- No. By its terms, Conventions 147 is not self-executing; hence, it requires appropriate implementing legislation and Executive regulatory or administrative action to give effect to its provisions. Further, as discussed in some detail in the President's Message transmitting Convention 147 to the Senate, the matters contained in Convention 147 are regulated in the United States by Federal laws and regulations. The Executive Branch, the AFL-CIO and the U.S. Council for International Business have unanimously agreed that, by virtue of existing U.S. law and practice, the United States has already given full effect to, and is in full compliance with, the terms of this convention, as set forth in the President's Message transmitting Convention 147 to the Senate. It is also our view that any further implementation of the policy to be pursued under the Convention is a matter of domestic determination, as provided for in the terms of the convention.

Q-14 -- **What,** if any, will be the annual costs to the U.S. Government of ratifying this Convention?

A-14 -- Since U.S. laws, regulations and industry practices conform with the terms of Convention 147, there are no implementation costs associated with ratification of this convention.

Q-15 -- **Will legislation** be required to implement this Convention?

A-15 -- Since the United States has already given full effect to, and is in full compliance with, the terms of this convention, ratification of Convention 147 would not require further implementing legislation.

Q-16 -- **There are approximately 126 nations that participate actively within the framework of the ILO. As of January 1986 only 17 have ratified Convention No. 147 which was drafted 10 years ago. Why have so few nations ratified this Convention?**

A-16 -- Convention No. 147 has now been ratified by 19 countries since its adoption in 1976. Article 6 of the convention provides that it shall come into force 12 months after ratification by at least 10 ILO Member States which together have a total share in world shipping gross tonnage of 25 percent. The 19 countries which have ratified the convention include most of the major maritime countries. Together, they represented 48 percent of world shipping gross tonnage as of July 1, 1986. (The ratifying countries are: Belgium, Costa Rica, Denmark, Egypt, Finland, France, Federal Republic of Germany, Greece, Iraq, Italy, Japan, Liberia, Morocco, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom.)

Only about half of the approximately 150 ILO Member States are active in shipping matters in the ILO and participate in its maritime conferences. Not surprisingly, those countries tend to be coastal countries that have either been traditionally engaged in shipping and commerce or are emerging countries in that regard. The number of ratifications of Convention 147 is thus relatively substantial, even when compared with ratifications of ILO maritime conventions adopted before 1976.

Q-17 -- As you know, the Offshore Marine Service Association (OMSA), which consists of the owners of American Flag vessels that service the offshore oil industry, opposes this Convention. They believe that "the minimum standards prescribed by this Convention are unnecessary for American Flag vessels" and that "the adoptions of this Convention carries the potential of significant costs to the government of the United States." Would you care to comment generally on the objections raised by this Association?

A-17 -- The May 12, 1986 letter from OMPA to the Chairman of the Senate Committee on Foreign Relations provides a detailed commentary on a number of aspects of the December 30, 1985 letter from the Secretary of Labor to the Secretary of State. The latter letter, part of the President's April 11, 1986 Message recommending Senate advice and consent to ratification of ILO Convention 147, includes an analysis of the conformity of United States law and practice with Convention 147.

Responses to the specific points raised by the OMSA letter will be set forth below. However, two general observations regarding the OMSA objections to ratification of Convention 147 may be useful.

First, the OMSA statement is premised upon the incorrect belief that the December 30, 1985 letter from the Secretary of Labor expresses merely the views of that single government agency. However, it is important to recognize that the Secretary of Labor's letter explicitly expresses "the coordinated view of the interested departments and agencies with respect to International Labor Organization Convention No. 147...." Further, "The coordinated view was reached after due consideration of their provisions by the Departments of Labor, Commerce and Transportation. Representatives of the Department of State were consulted in connection with the formulation of this view. In addition, members of the President's Committee on the International Labor Organization, which includes worker and employer representatives, were consulted and support ratification of the Convention."

Secondly, although the OMSA letter states that this organization represents American flag vessels engaged in our offshore oil industry, its objections to U.S. ratification of Convention 147 appear premised upon a mistaken belief that "The Convention serves only the vested interests of certain organizations, who under the guise of improved minimum standards for merchant shipping, continue their well-orchestrated attacks on the 'so-called Flags of Convenience,' now unfortunately, synonymous with the term 'sub-standard.'"

In fact, however, Convention 147 applies to ships flying any flag; it is not directed solely at so-called flags of convenience. In addition, this convention was adopted by the Sixty-Second (Maritime) Session of the International Labor Conference in 1976, where it was approved by a vote of 160 for, none against, with 67 abstentions. The United States Government, Employer and Worker representatives voted for the convention. The Soviet bloc countries fought hard, but unsuccessfully, to limit the convention to "flags of convenience" ships, and their worker and employer representatives, as well as their governments, abstained in the final vote for adoption. U.S. tanker companies, which have pressed for improved ship safety standards internationally were represented by the U.S. employer delegate. Furthermore, the Federation of American Controlled Shipping also supports the Convention.

Q-18 -- Do Articles 1(5) and 2(a)iii require the United States to enforce the 15 Conventions listed in the appendix to this Convention, many of which the U.S. has not ratified?

A-18 -- Ratification of Convention 147 by a Member State does not require that State to enforce ILO conventions it has not ratified. Convention 147 states (Article 2(a)iii) that each ratifying member "should satisfy itself that its laws and regulations are substantially equivalent" to the conventions listed in the appendix to Convention No. 147, "insofar as the member is not otherwise bound to give effect to the Conventions in question."

The United States has ratified three of the 15 conventions listed in the appendix to C. 147: the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), and the Officers' Competency Certificates Convention, 1936 (No. 53). The Executive Branch, the AFL-CIO, and the U.S. Council for International Business have jointly determined that, in addition to the U.S. laws that give effect to those three maritime conventions, there are laws and regulations in the United States that are substantially equivalent to the 12 conventions listed in the Appendix that the U.S. has not ratified.

Accordingly, the Secretary of State's March 20, 1986 letter of submittal to the President proposes five understandings, discussed in the Secretary of Labor's December 30, 1985 letter, "designed to clarify portions of the text of the Convention as they relate to the domestic law of the United States" be included in the United States instrument of ratification. Two of those proposed understandings address the issue at hand:

> (3) It is the understanding of the United States that the term "substantially equivalent" as it appears in Article 2(a) requires the ratifying state to take account of the general goal of the instruments in the Appendix, but does not require it to adhere to the precise terms of these instruments. This means that national laws and regulations may be different in detail, if the ratifying state has satisfied itself that the general goals of the instruments in the Appendix are respected.
>
> (4) The United States Government understands and is satisfied, as required under Article 2(a) of the Convention, that the substantive provisions of United States statutes and regulations are substantially equivalent to the rights and responsibilities established in the instruments enumerated in the Appendix.

Q-19 -- **Would the amending procedures in Article 10 allow the ILO to add without U.S. agreement other Conventions not ratified by the U.S. to the appendix, thereby forcing U.S. compliance with these other Conventions?**

A-19 -- Convention 147 would not require U.S. compliance with ILO Conventions that the U.S. has not ratified. Article 10 of Convention 147 merely provides that the Governing Body of the ILO may present a report on the working of this convention and examine the desirability of placing on the agenda of the International Labor Conference the question of its revision in whole or in part. Article 11 of Convention 147 provides that Convention 147 "shall...remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention."

Q-20 -- **Article 2(b)(iii) requires flag-states to enforce shipboard conditions of employment and living arrangements "prescribed by nations' laws or regulations, or laid down by competent courts." In this regard, what is the meaning of "laid down by competent courts?"**

A-20-- "Laid down by competent courts" is an effort to recognize the full scope of a nation's laws and regulations, by taking into account the role of its courts. The adjective "competent" is intended solely to permit recognition of the appropriate jurisdictional role of the courts in individual nations, either under their present law and practice, or in their future development of law and practice. The role of "competent courts" is for determination by individual nations, and is intended to recognize the range of the role of courts under various governmental systems. The convention has no effect on the role of courts in any nation, other than to recognize their appropriate national role.

Q-21 -- Does Article 2(c) prescribe that parties to the Convention in matters of shipboard conditions of employment and living arrangements where the party has "no effective jurisdiction" adhere to two collective bargaining conventions not adopted by the United States?

A-21 -- Article 2(c) provides that each Member which ratifies Convention 147 undertakes "to satisfy itself that measures for the effective control of other shipboard conditions of employment and living arrangements, where it has no effective jurisdiction, are agreed between shipowners or their organizations and seafarers' organizations constituted in accordance with the substantive provisions of the Freedom of Association and Protection of the Right to Organize Convention, 1948, [No. 87] and the Right to Organize and Collective Bargaining Convention, 1949 [No. 98]...."

The United States has not ratified either Convention 87 or 98, which are also listed in the Appendix of Convention 147. Article 2(c) does not require ratification of Conventions 87 and 98. Further, as discussed in our response to Question 18, ratification of Convention 147 does not require a Member State to comply with conventions that it has not ratified.

In addition to the proposed understandings cited in our discussion of Question 18, the Secretary of State's letter of submittal to the President includes a fifth:

> (5) It is the understanding of the United States that the legal status of the terms of collective bargaining agreements relating to shipboard conditions of employment and living arrangements have no greater effect than that accorded such terms under United States labor statutes.

Many seafarers in the United States have their conditions of employment determined pursuant to the terms of articles of agreement which are required by law and which are often expanded by agreements developed by seamen's unions and shipping companies. The workers aboard vessels registered in the United States are free to organize and bargain collectively under protection of United States labor laws. The National Labor Relations Act, 29 U.S.C. Para. 151, et seq., protects the right of workers in the United States to organize and bargain collectively. Disputes over compliance with articles of agreement or over collective bargaining agreements may, under certain circumstances, be raised with appropriate Federal agencies such as the National Labor Relations Board or the Coast Guard.

Q-22 -- Does Article 2(d) require the United States Government to participate in (1) "complaints" of American seafarers serving aboard American ships; (2) complaints of Americans serving aboard foreign ships; and (3) complaints of foreigners serving aboard foreign vessels? Would Article 4 permit anyone to "complain" on an undefined health or safety issue? If so, does this place an undue burden on the U.S. Government?

A-22 -- Article 2(d) requires a ratifying Member State to ensure that "adequate procedures...exist for the engagement of seafarers on ships registered in its territory and for the investigation of complaints arising in that connection." It also requires that "adequate procedures...exist for the investigation of any complaint made in connection with and, if possible, at the time of the engagement in its territory of seafarers of its own nationality on ships registered in a foreign country, and that such complaint as well as any complaint made in connection with and, if possible, at the time of the engagement in its territory of foreign seafarers on ships registered in a foreign country, is promptly reported by its competent authority to the competent authority of the country in which the ship is registered, with a copy to the Director-General of the International Labor Organization."

As discussed in the President's Message requesting Senate advice and consent to ratification of Convention 147, the U.S. laws, regulations, and industry practice already conform with that convention. Thus, ratification of this convention will not place an undue burden on the U.S. Government.

As regards sea-going vessels registered in the United States, U.S. shipping laws and regulations require, among other things, compliance with certain minimum safety standards. These ships are subject to inspection by the Coast Guard, which may order the master or owner of the ship to make necessary repairs to conform with established safety standards. The Coast Guard also administers laws governing certain shipboard conditions of employment and living arrangements on U.S. registered vessels. Present U.S. law and regulations provide for Coast Guard investigations of complaints about health and safety matters. Such complaints require support by one or more specifications regarding the facts involved. Further, as indicated in our response to Question 21, engagement of seafarers is arranged pursuant to the terms of articles of agreement, which are regulated by U.S. law and which are often expanded by agreements developed by seafarers' unions and shipping companies.

Complaints by U.S. seafarers on foreign flag ships are extremely unlikely, since their employment on such ships is rare. Complaints by foreign seamen on foreign flag ships could arise when these enter U.S. ports. Under the Safety of Life at Sea Convention, the Coast Guard may already investigate complaints regarding alleged violations of that Convention.

Current Coast Guard procedures regarding such complaints allow for notification of appropriate representatives of the flag country when safety violations are found aboard a vessel. Any questions regarding whether foreign flag ships comply with ILO conventions in force in the United States may be raised with the Federal agency responsible for the subject of the Convention in question.

Article 4 provides that if a Member which has ratified Convention 147 receives a complaint or obtains evidence that a foreign flag ship in its port does not conform to the standards of Convention 147, it may prepare a report to the government of the country in which the ship is registered, with a copy to the ILO, and it may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health. Any action under Article 4 of Convention 147 would require clear specifications in regard to safety and health conditions. The intent of Convention 147 is to establish express international standards for the port state's consideration, and to avoid undefined issues. Furthermore, the provision in Article 4 that the port state "may take measures necessary to rectify any conditions on board which are clearly hazardous to safety and health," applies to flagrant examples implying danger to safety and health, matters already of concern to port states under existing law and regulations.

Q-23 -- Does Article 3 impose on the United States a requirement to notify any American that might be employed aboard any foreign ship that is not party to the Convention of "possible problems?"

A-23 -- Article 3 sets no mandatory requirement on the United States for notifying any American seeking employment on a foreign flag ship regarding "possible problems of signing on a ship registered in a state which has not ratified the Convention." The article states explicitly that any ratifying member "shall, in so far as practicable, advise its nationals on the possible problems...." Furthermore, such instances of inquiries by American nationals will continue to be rare.

In the event of such inquiries, the Departments of Labor or State will respond to inquiries regarding whether the foreign flag ships are from countries that comply with the protections of Convention No. 147, and the Coast Guard may respond to inquiries regarding whether a foreign flag ship is registered in a country which is party to international safety treaties to which the U.S. is a party. This information is readily available.

Q-24 -- Does Article 2(3) require that the United States ensure that American seafarers are properly qualified or trained under another ILO Convention that the United States has not ratified?

A-24 -- No, this provision of Convention 147 does not require a ratifying Member State to comply with an ILO convention that it has not ratified. The reference in Article 2(e)--there is no Article 2(3)--is not to a Convention, but to the Vocational Training (Seafarers) Recommendation, 1970. Recommendations are not binding and they do not require ratification by Member States.

Further, current U.S. law and practice fully meet the provisions of this Recommendation. The Coast Guard conducts examinations to verify that the seafarers employed on U.S. flag vessels are properly trained and qualified. The Coast Guard examines licensed individuals and rated seamen before those seafarers may obtain merchant mariner's documents. These seafarers must also meet service requirements, which can in part be obtained at approved nautical schools. These requirements include training aboard a ship and/or at a certified nautical school.

Q-25 -- Do the "conventions" in the appendix conflict with American minimum age, health care, and physical standards?

A-25 -- The Conventions in the appendix do not conflict with American minimum age, health care and physical standards. U.S. laws and regulations addressing the minimum age for working on shipboard are in substantial compliance with the International Labor Organization Minimum Age (Sea) Convention (Revised), 1936, No. 58 to which the United States is a party. Similarly, the United States is in substantial compliance with the ILO Shipowners' Liability (Sick and Injured Seamen), 1936 Convention, No. 55, to which it is a party. Medical examination of U.S. seamen is conducted by the Coast Guard, and under labor-management agreements and are in substantial compliance with the Sickness Insurance (Sea) Convention, 1936 (No. 56), and Medical Examination (Seafarers) Convention, 1946 (No. 73).

RESPONSES OF SECRETARY BROCK TO QUESTIONS ASKED BY SENATOR HELMS

Q-1 -- There have only been seven conventions ratified by the United States in the last 60 years or more out of a total of 162 conventions. The last convention ratified by the United States was given Senate approval a quarter century ago. And the next to last convention was approved by the Senate a half century ago. This is not exactly a vote of confidence by the Senate in ILO conventions. Why are these two conventions different from those proposed in the last 25 or 50 years?

A-1 -- As you note, the United States has ratified only seven International Labor Organization (ILO) conventions. All but one are maritime conventions; the nonmaritime convention is a strictly procedural convention, transferring the ILO from the League of Nations to the United Nations. The seven ILO conventions ratified by the United States are as follows:

No. 53, Officers' Competency Certificates Convention, was ratified September 1, 1938,
No. 54, Holidays with Pay (Sea) Convention, August 15, 1938,*
No. 55, Shipowners' Liability (Sick and Injured Seamen), August 15, 1938,
No. 57, Hours of Work and Manning (Sea) Convention, August 15, 1938,*
No. 58, Minimum Age (Sea) Convention, August 15, 1938,
No. 74, Certification of Able Seamen Convention, February 17, 1953,
No. 80, Final Articles Revision Convention, May 21, 1948.

In addition, however, three other maritime ILO conventions received Senate advice and consent, but were never ratified because implementing legislation has not been enacted:

No. 68, Food and Catering (Ship's Crews) Convention received Senate advice and consent July 4, 1952,
No. 69, Certification of Ships' Cooks Convention, July 4, 1952,
No. 73 -- Medical Examination (Seafarers) Convention, July 4, 1952

Four ILO conventions are still pending before the Senate:

No. 87, Freedom of Association and Protection of the Right to Organize Convention, submitted August 27, 1949.

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*These two conventions never entered into force because they did not receive the required number of ratifications; however, the ILO subsequently adopted revised conventions on these same subjects.

No. 105, Abolition of Forced Labor Convention, July 22, 1963
No. 116, Final Articles Revision Convention, June 21, 1962,
No. 122, Employment Policy Convention, June 21, 1966.

In short, as you imply, the Senate has not given its advice and consent regarding ratification of an ILO convention since 1953. Further, until President Reagan submitted ILO Conventions 144 and 147 to the Senate on April 10, 1986, the Executive Branch had not submitted an ILO convention with a request for Senate advice and consent to ratification since 1966.

ILO Convention 144 is a procedural standard, which requires ILO members that ratify it to establish and maintain a mechanism to ensure effective tripartite consultations between government, employers, and workers on ILO matters. Convention 147 establishes minimum standards for safety, social security measures, and shipboard conditions of employment for merchant ships.

ILO Conventions 144 and 147 differ from those proposed earlier in two important respects. First, both conventions have been subjected to exhaustive legal analysis by the Tripartite Advisory Panel on International Labor Standards (TAPILS). This subgroup of the President's Committee on the ILO, was established in 1980 to analyze U.S. compliance with selected ILO conventions and examine the impact of their ratification on existing and developing domestic labor law. Chaired by the Solicitor of Labor, TAPILS consists of legal advisors from the Departments of Labor, Commerce, and State, the AFL-CIO, and the U.S. Council for International Business. Thus, unlike other ILO instruments, Conventions 144 and 147 have been uniquely subjected to legal analysis regarding their compliance with U.S. laws and practices and the effects of their ratification on such laws and practices by representatives of business and labor, as well as the Executive Branch.

Secondly, this tripartite panel of legal experts, the tripartite President's Committee on the ILO, interested departments and agencies, and the President have all unanimously concluded that neither convention conflicts in any way with U.S. law or practice.

More specifically, the Executive Branch, the AFL-CIO, and the U.S. Council for International Business found that the United States is in full compliance with Convention 144. No modification of U.S. legislation is required to give effect to the provisions of that convention. Further, if and to the extent any question were ever to arise with respect to U.S. compliance with Convention 144, it is well within the power of the Executive Branch to make such changes in our practices as might be necessary or appropriate.

Regarding Convention 147, it was similarly found that present United States legislation, regulations and industry practice bring us into compliance with the obligations of the Convention and that any further implementation of the policy to be pursued under the convention is a matter of domestic determination, as provided for in the terms of that Convention. In addition, the Executive Branch has proposed for inclusion in the United States instrument of ratification five understandings designed to clarify portions of the text of the Convention as they relate to the domestic law of the United States.

Q-2 -- What effect, if any, would Convention No. 147 have upon our competition in the maritime industry? Would you agree that our maritime industry has suffered from unfair competition during the past twenty years with American vessels flying foreign flags of convenience? How will this Convention aid in the important area of economic competition, specifically jobs for the members of the American merchant marine?

A-2 -- By reducing the number of substandard ships or limiting the operations of such ships to ports of nonratifying Member States, Convention 147 will have a beneficial effect upon our maritime industry.

The primary intent of Convention 147, as stated by its tripartite supporters at the 62nd (Maritime) International Labor Conference in 1976, was to deal with shipowners who operated vessels with substandard safety and health conditions. The concern was that such vessels are hazards to host ports and coastal nations, as demonstrated by several major maritime catastrophes involving tankers. The provision for State port control over entering foreign flag ships set forth in Article 4 of the Convention was stated by the Worker Vice-Chairman of the Committee on the Convention as offering "a system whereby any restraint on substandard vessels will be through legal or governmental channels and will be on the basis of standards contained in the two instruments, that is, internationally agreed standards."*

The effects of the Convention on such unfair competition in the industry will, however, be gradual. Over time, the result of ratifying Member States' port examinations, reporting, and corrections generated by their findings of "any conditions on shipboard which are clearly hazardous to safety or health" will be either the scrapping of unsafe ships or curtailment of their operations to the ports of non-ratifying countries.

Convention 147 does not single out so-called "flags of convenience," or American-controlled shipping under foreign flags. The standards established by this convention apply to ships of all nations. Thus, for example, flags of convenience will receive the same treatment as other flag ships facing complaints of substandard conditions under Article 4. However, one of the purposes of the ILO Convention was to move the standards of emerging Third World nations' ship operations closer to the standards of the traditional maritime countries.

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* International Labor Conference, Sixty-Second (Maritime) Session, Record of Proceedings, Geneva, 1976, p. 248.

Most American-controlled vessels flying foreign flags are tankers and dry bulk carriers. In recent years, U.S. flag dry cargo liner operations and U.S. flag tanker vessels in the coastal trades, which are limited by U.S. law to U.S. flag vessels, have been more affected by world economic conditions and international petroleum production and pricing developments than by competition from ships flying flags of convenience.

U.S. tanker companies, which have been in the forefront of efforts to establish stricter international safety, health and crew training requirements, supported adoption of Convention 147 at the 1976 ILO Maritime Conference. The Soviet bloc, however, sought unsuccessfully to direct the convention solely at "flags of convenience" ships. When the scope of the Convention was broadened to apply to ships of all flags, the Soviet bloc also opposed the port control provisions of Article 4. They abstained in the final vote on the Convention, a position taken by their government, employer, and worker representatives alike.

In sum, the minimal international standards set by this Convention will help save the lives of seafarers, reduce cargo losses for the shipping industry, and protect coastal and port States from the costs of marine casualties and other maritime safety and health hazards. These ILO standards have been ratified by 19 Member States, including most of the traditional maritime nations. Together, these 19 nations account for half of the world's gross shipping tonnage. Although ratification of Convention 147 did not require any of these nations to change their maritime standards, some data indicating the benefits flowing from their ratification of this international instrument are available. The 1978 Amoco Cadiz tanker disaster led 13 ratifying Western European nations (and one nonratifying Western European nation) to establish a 1982 Memorandum of Understanding on Port State Control in order to coordinate their implementation of the standards required by ILO Convention 147 and related International Maritime Organization conventions. In their most recent report, these 14 nations reported that in 1986 they carried out a total of 11,740 inspections on ships from 116 flags, with 307 either detained or delayed as a result of their findings of serious safety or health deficiencies--a slight decline from the previous year.

Notwithstanding the benefits that accrue from increased observance of the maritime standards established by Convention 147, it is important to recognize that international maritime trading conditions, national merchant marine policies, and labor and management orientations will continue to be the principal determinants of the economic well being of national merchant marine industries. These are also the principal factors that will continue to determine job opportunities for U.S. seamen, as for the seafarers of other nations.

Q-3 -- I will tell you quite frankly I am against any kind of self-executing treaty or convention. Laws are to be made by the legislature and not by the executive. What kind of statutes will be required to implement this convention? Or do you believe that no legislation is required?

A-3 -- By their terms, Conventions 144 and 147 are not self-executing. Both Conventions require appropriate implementing legislation, and Executive regulatory or administrative action to give effect to their provisions.

In fact, the Executive Branch, the AFL-CIO, and the U.S. Council for International Business are of the view that, by virtue of existing U.S. law and practice, the United States has already given full effect to, and is in full compliance with, the terms of both Conventions, as set forth in the message transmitting these Conventions to the Senate. Therefore, neither Convention would require further implementing legislation if ratified.

Q-4 -- I am particularly concerned with Article 5(1)(c) of Convention No. 144 which calls for consultations on the re-examination of unratified ILO conventions with respect to measures which might be taken to obtain ratification. In the advice and consent process, the Senate gives its advice and consent on a treaty or convention, and then that is.

The Senate votes a treaty or convention up or down. If is down, then it should be out. Otherwise, we are going to be subject to the same problems and constitutional liabilities that some of my distinguished colleagues on this panel would like to bring about for the 1972 ABM Treaty. I do not like the idea of periodic reviews of unratified treaties to reopen a ratification process.

A -- Article 5(1)(c) provides that one of the purposes of the tripartite mechanism which ratifying Member States must establish is consultation on the reexamination at appropriate intervals of unratified conventions, to consider what measures might be taken to promote their implementation and ratification as appropriate.

This article simply requires that the Executive Branch consult, at appropriate intervals, with labor and business regarding what measures might be appropriately taken to promote the implementation and ratification of ILO conventions. Article 5(1)(c) does not require that the President seek ratification of any ILO convention. Still less does it require the President to reopen the ratification process by requesting Senate approval of an ILO convention that the Senate has voted down.

It may be useful to point out that, to encourage ratification, Article 19 of the ILO Constitution requires that Member States submit periodic law and practice reports regarding conventions they have not ratified. The Executive Branch has for many years undertaken tripartite consultations regarding ILO conventions that we have not ratified. When we prepare U.S. law and practice reports on conventions that we have not ratified, we send our draft report to the AFL-CIO and the U.S. Council for International Business for review. Their comments are generally incorporated into our final report. In addition, these organizations may also submit comments directly to the ILO.

Q-5 -- Up until now, the U.S. has had a long-standing practice of not ratifying non-maritime standards. Yet, Convention No. 144 is a procedural convention. Why are we now digressing from our long-standing custom with respect to ILO agreements?

A -- As you know, the Senate has not ratified any ILO convention since 1953. Further, no President has sought ratification of an ILO convention for a generation. President Reagan broke this recent tradition of Presidential inaction last year, when he requested Senate advice and consent to ratification of Convention 147, a maritime convention, and Convention 144, a procedural convention requiring tripartite consultation on ILO matters.

This Administration is seeking a break with our past tradition in part because it believes that a general improvement in our ratification record in the ILO will further U.S. foreign policy interests and in part because U.S. ratification of Convention 144 particularly serves those interests.

Although ILO convention 144 is merely a procedural convention, it has become both a symbol and a test of whether a member country of the ILO pays more than lip service to tripartism.

Tripartism is a fundamental principle of the ILO and its most distinctive structural feature. It is the only member of the United Nations system--indeed, it is the only international organization--where governments meet with workers and employers as equal partners. However, genuine tripartism requires autonomy. This is true in the ILO, where the Employer and Worker Groups zealously guard their independence from the Government Group. It is also true in ILO Member States, where genuine tripartism requires free trade unions and free employer associations.

That is why U.S. interests in promoting American democratic values abroad would be particularly well served by our ratification of this convention. Despite its procedural nature, U.S. ratification of Convention 144 would demonstrate to the world at large our nation's commitment to free trade unions and free enterprise.

Responses of James D. Burge
Corporate Vice President, Motorola, Inc.
on behalf of the
National Association of Manufacturers
to
Senator Jesse Helms
on
Ratification of ILO Conventions
October 22, 1987

HELMS: What do you think of the provision in Convention No. 144 which permits consultations for the purpose of reexamining and, I suppose, resubmitting unapproved ILO Conventions?

BURGE: Our concerns have little to do with with the consultation and review process set forth in the convention. It currently exists in the form of the Presidents' Committee on the ILO and, more specifically, through the workings of the Tripartite Advisory Panel on International Labor Standards or TAPILS.

Rather, our concern is about the future review of unratified conventions, some of which depart radically from U.S. labor law and practice. For this reason, we have stated that NAM would oppose ratification unless the ground rules agreed to unanimously by the President's Committee were made binding and communicated when Convention No. 144 is deposited with the ILO. This would ensure that, first, adoption of ILO labor standards could not be used to modify U.S. labor law and, second, the ILO and others are aware of the conditions that will govern review of conventions in the future.

HELMS: Up until now, the United States has had a long-standing practice of not ratifying non-maritime labor standards. Yet, Convention No. 144 is a procedural convention. Why are we now digressing from our long-standing custom with respect to ILO agreements.

BURGE: When the United States rejoined the ILO, we made a commitment to examine unratified conventions and at least consider adoption of those where there were no conflicts. The creation of the President's Committee and TAPILS was an expression of that commitment.

As has been noted in previous testimony, Convention No. 144, along with No. 147, was identified by TAPILS several years ago as not conflicting with U.S. labor law and, thus, amenable to U.S. ratification. The President's Committee in October 1985 agreed with TAPILS recommendation, subject to the three understandings regarding Convention No. 144 on the ground rules for the future review of unratified ILO conventions.

Regarding why the United States is departing from its practice of not adopting non-maritime conventions, I can only infer from statements of the Administration and AFL-CIO that it is two-fold. First, ratification of Convention No. 144 is intended to counter what they see as a perception by ILO members that the U.S. has assumed a posture of "doing as I say, not as I do." Second, proponents argue that our ability to achieve U.S. policy objectives has been diminished because of our lack of ratification. NAM, however, is not persuaded on the merits of these arguments nor am I.

HELMS: As far as you know, if we did not approve these conventions, would it make any difference with respect to American participation in the International Labor Organization?

BURGE: I can only draw on my personal experience and that of my colleagues at the International Labor Conference, working within the ILO framework. That collective experience leads me to conclude that non-ratification of conventions has had little, if any, effect on our ability to advance U.S. policy objectives or meanfully participate in the ILO. Since returning to the ILO in

1980, the United States has exercised many positive influences in the ILO, some of which are cited in my testimony.

One can ask rhetorically, would our effectiveness has been enhanced had additional labor standards been adopted? I can only speculate and say, maybe. In any event, I do not believe the potental benefits outweigh what we believe to be real risks associated with ratification. For example, it is reasonable to expect increased pressure to adopt additional ILO standards, some of which conflict with our labor laws. Beyond that, we see little evidence that ratification of ILO conventions will in any way enhance this nation's global competitiveness.

I would like to make an additional point, if I may, one briefly touched on in my statement. Making an issue of our record of ratification and failure to adopt "conerstone conventions," for example, Convention No. 87 and 98, seems to me a tempest in a teapot, more smoke than fire. It is not as though the United States does not operate under a body of law that protects the rights of employees. While our laws may not track the letter of every ILO convention, they certainly satisfy the intent of the standards, including 87 and 98. I would go even further and say our practices are as good as, if not better, than many countries that have ratified specific conventions. And I don't believe that point can be disputed. To conclude and drawing again on my personal experience at the ILO, I believe other member states recognize and respect our labor laws, and the equitable balance they provide to the rights of both employers and employees.

HELMS: Would these particular conventions in any way have an indirect or long-run impact on state labor law and practice? If the tripartite practice makes the adoption of ILO conventions easier than in the past, then will the conventions that are submitted and approved preempt state labor law and regulations? Would this also be true for Convention No. 147? I must tell you that if this is so, I would find it hard to support such agreements.

BURGE: Convention No. 144 does not conflict with state law and practice. In many ways, it formalizes the tripartite consultation process now in place in the United States. But other conventions conflict fundamentally with U.S. law, the "cornerstone conventions," for example. If ratified, they would supercede corresponding U.S. federal and state laws. Again, this is the reason we feel so strongly that the ground rules or understandings agreed to by the President's Committee must be made binding and communicated to the ILO.

Convention No. 147 does not offer the potential for conflict with state law since it, like other maritime standards, addresses an area of exclusive Federal jurisdiction.

RESPONSES OF ANTHONY G. FREEMAN TO QUESTIONS ASKED BY SENATOR PRESSLER

Question 1:	If we do not approve these two conventions, what difference will it make with regard to American participation in the ILO?
Answer:	The ILO is tracking very closely developments in the US regarding the ratification of these two Conventions. If we fail to ratify these two Conventions when there is no impediment from the viewpoint of either US law or policy, we send a message that the US does not take seriously the ratification of ILO Conventions. Should we fail to ratify the two Conventions, our policy will come increasingly under attack in the ILO by our adversaries as well as by our closest allies. We will be accused of trying to establish a double standard. We encourage other member states to ratify, but we ourselves do not.

It should be noted that General Secretary Gorbachev sought to exploit the US ratification issue during his recent interview with NBC anchorman Tom Brokaw in an attempt to deflect questions on Soviet human rights violations.

The most likely immediate impact of failure to ratify these conventions will be the erosion of our ability (a) to keep the ILO focussed on examining the violations of human rights and worker rights in communist countries; and (b) to thwart the continuing Soviet effort to undermine the ILO's unique human rights machinery. Over the longer run, we can expect more reversals of the gains we have achieved since our return to the ILO in 1980 and an overall deterioration in our ability to maintain the pro-Western orientation of this international organization.

Question 2: My first question leads me inevitably to ask, what has the United States gained since returning to the International Labor Organization. If we were right in leaving the ILO in 1977, then why did we return? What benefits have we derived from membership in the ILO since our return?

Answer: The principal reasons for US withdrawal in 1977 were:

1. The failure of many countries to adhere to the principle that worker and employer representatives should be independent and free from government domination, which is a fundamental tenet of the ILO's tripartite structure.

2. The selective application by ILO conferences of the basic Conventions on freedom of association and forced labor on some member states, but not in cases involving communist countries.

3. The adoption of resolutions by ILO conferences condemning member states rather than using established ILO procedures to handle complaints that a ratified Convention was not being observed or that trade union rights have been violated.

4. The involvement of the ILO in extraneous political issues beyond the competence and mandate of the organization.

We returned to the ILO in 1980 because of substantial improvement on all fronts in question. On our re-entry, the US gained a degree of political leverage almost unparalleled compared to that which we possess elsewhere in the UN system. Among the gains resulting from our enhanced leverage:

--adoption of conference resolutions calling for strengthening the ILO's tripartite system of decision-making (which is what tilts the ILO's voting results in favor of Western interests, as compared to the other specialized agencies of the UN);

--adoption of the secret ballot procedure;

--defeat of Soviet-backed, anti-Israeli resolutions;

--adoption of a reform mechanism to screen out resolutions that violate ILO due process;

--general decrease in instances of gratuitous politicization of ILO conferences;

--censure of Czechoslovakia in 1960 (and again in 1983) for discriminating against workers on the basis of their political beliefs; and of the Soviet Union in 1981 for failure to bring its law and practice into conformity with the ILO's Convention on freedom of association;

--intensive review of the violation of trade union rights in Poland by the ILO supervisory machinery over a period of years, culminating in the strongly condemnatory Commission of Inquiry report in 1984;

--decisive rejection in 1983-85 of a concerted Soviet effort to "reform" and "democratize" (i.e., emasculate) the supervisory, or human rights, machinery of the ILO;

--defeat of a Nicaraguan effort to manipulate the Non-Aligned Movement group and to politicize the annual conference in 1985 through the introduction of a resolution against the US trade embargo. (Similar Nicaraguan initiatives at the time in other UN specialized agencies were successful).

Beyond these specific improvements which we have been able to obtain, the ILO continues in its role of raising the labor standards and working conditions of workers around the world in such critical areas as occupational safety and health, freedom of association, the elimination of forced labor and employment discrimination, etc. The ILO is a unique international forum which permits us to advocate the American economic, social and political system and to stress the advantages of a pluralistic society as compared to communist and other totalitarian systems.

Question 3: What impact upon state labor law and practice are these conventions going to have? Will they preempt state labor law regulations? I must tell you that if this is so, I would find it hard to support these agreements.

Answer: Neither Convention 144 nor Convention 147 has any impact on state labor law and practice. The implementation of the tripartite process on issues concerning the ILO, as well as maritime law, are both matters entirely encompassed within federal jurisdiction.

In an effort to assuage concerns about the impact of ILO Conventions on state or federal labor law and regulations, the following procedures have been agreed to within the President's Committee on the ILO:

-- Each Convention will be examined on its merits by TAPILS -- the Tripartite Advisory Panel on International Labor Standards, which consists of legal advisers from the Departments of State, Labor, and Commerce, the AFL-CIO and the US Council for International Business, and is chaired by the Solicitor of the Department of Labor.

-- If there are any differences between the Convention and federal law and practice, these will be dealt with in the normal legislative process.

-- There is no intention to change state law and practice by federal action through ratification of ILO Conventions. The TAPILS examinations include review of possible conflicts between federal and state law that might arise through ratification.

TAPILS has determined that Conventions 144 and 147 do not conflict with US laws.

Question 4: As I seem to remember, the United States contributes approximately one-fourth of the total ILO budget. That, I presume, is a lot of money. What benefits are coming to the United States for this considerable budgetary support? The International Labor Organization has 126 member states. Why, given the large number, is the United States paying one-fourth of the ILO's operating expenses. Who is not contributing and why?

Answer: Assessments in the ILO are consistent with those applied at the United Nations. Other major UN-system agencies, such as WHO, FAO, and ICAO, also use basically the same funding formulae. The level of assessments is based primarily on Gross National Product (GNP). Under strict application of the relevant criteria the US would pay about 26 percent, but both US law and UN regulations set a ceiling of 25 percent. In dollar terms the US was assessed $31,642,500 for 1987. All members of the ILO must contribute financially to the organization. For the poorest members, the contribution is minimal, approximately .1%. As of November, 84 of 150 members had not made full payment of their 1987 assessment.

The ILO advances a number of important US interests including:

-- to promote worker rights and free labor movements;

-- to promote human rights most directly expressed through the work-place;

-- to help less developed countries advance in social and economic directions compatible with US security and ideals;

-- to serve as a multilateral technical assistance agency, with an American presence, in the field of human resources develoment;

-- to protect and promote US trade and investment interests through international labor standards that reduce unfair competitive advantages of others; and

-- to provide information about new labor, manpower, and occupational health and safety policies and programs of potential use in the United States.

Through its investigative and supervisory machinery, the ILO seeks to ensure the implementation of its Conventions. Of major interest to the US are those Conventions advocating freedom of association, non-discriminatory employment practices, and maintenance of safety, health, and social security standards. Although the ILO machinery does not have the force of law, it does draw public attention to those countries which impose restrictive or unfair labor practices or otherwise fail to respct fundamental human rights.

Through its tripartite organization, as well as its management and entrepreneurial training programs, the ILO directly promotes a free economy and the market system.

RESPONSES OF ABRAHAM KATZ
PRESIDENT, U.S. COUNCIL FOR INTERNATIONAL BUSINESS
to
SENATOR LARRY PRESSLER
concerning
RATIFICATION OF ILO CONVENTIONS 144 AND 147

Question 1. Will competitiveness in the international marketplace be aided or impaired by the ILO Conventions under consideration?

Convention 144 is a procedural convention that requires ratifying countries to establish and maintain procedures to ensure effective tripartite consultations among government, workers and employers on ILO matters. The nature and form of these procedures are determined in each country in accordance with national practice. Because Convention 144 is solely concerned with ILO activities under the ILO Constitution, by its terms it does not affect substantive domestic law. Consequently, international competitiveness is neither aided nor impaired by ratification of Convention 144.

Convention 147 concerns minimum maritime standards that in general would improve employment conditions including health and safety on merchant ships. Ratification of Convention 147 would improve the competitive position of U.S. flag merchant vessels or U.S. controlled vessels registered abroad either by forcing all substandard operators to upgrade living and working conditions on their vessels or, alternatively, by curtailing substandard vessels from using U.S. ports.

Question 2. What is the overall attitude of the business community to the ILO? What is the attitude, to the best of your knowledge and awareness, of the business community toward these two conventions under consideration?

The attitude of the U.S. business community is for the most part supportive of the ILO. It supports action by the ILO to help improve the living standards of workers through the joint efforts of member nations. Unlike other agencies of the United Nations, the ILO's tripartite structure permits workers and employers independent of their governments to participate in the formulation of international labor policies that affect working conditions. Although the results of ILO deliberations can sometimes present problems for business, the ILO's tripartite structure affords U.S. business the opportunity to influence directly the Organization's policies and to moderate substantially its potential negative impact on business. Consequently, U.S. business representatives actively participate in the development of ILO standards, i.e., conventions or recommendations, that can have a substantial impact on industrial relations statutes in the United States and in other countries where American companies do business.

Ratification of Convention 147 is broadly supported by the business community. Its ratification would be consistent with the past practice of the United States to ratify only maritime conventions.

As I stated in my testimony to the Foreign Relations Committee on October 1, 1987, the merits of ratifying Convention 144 are far more controversial from the business community perspective. If ratified, Convention 144 would be the first consequential non-maritime convention ratified by the United States and, thus, would establish a precedent for ratification of other ILO conventions that may conflict with U.S. labor law. Moreover, the business community is not convinced that ratification of Convention 144 would significantly improve U.S. effectiveness in the ILO as the proponents of ratification claim.

The business community has been particularly concerned about the implementation of Article 5(1)(c) of the Convention that requires periodic re-examination of unratified conventions to determine what steps can be taken to promote their implementation and ratification. It is concerned that by creating a statutory obligation to examine unratified ILO conventions that ratification of Convention 144 would create a presumption that it will be possible to alter federal and state legislation by treaty rather than through the normal legislative process. Also, by ending the longstanding U.S. practice of not ratifying non-maritime conventions, ratification of this important ILO convention would send the wrong signal to other member countries of the ILO and create an expectation in the ILO community that the United States would be ratifying other ILO conventions whose legal requirements differ from domestic labor law.

Consequently, from the business community perspective, it is an essential prerequisite to ratification of Convention 144 that ground rules for the implementation of Article 5(1)(c), as agreed to by the AFL-CIO, the business community and the concerned U.S. government agencies, make clear that U.S. labor law will not be amended by treaty without federal and state law meeting the requirements of a particular ILO convention prior to its ratification by the President. That agreement on ground rules reached by the members of the President's Committee in October 1985 provides that:

1. Each ILO convention will be examined on its merits on a tripartite basis;

2. If there are any differences between the convention and Federal law and practice, these will be dealt with in the normal legislative process; and

3. There is no intention to change state law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

At the same time, the business community has maintained that it is essential to record the agreement on the ground rules in some appropriate manner with the ILO in order that the ILO and its members be informed as to the basis (*i.e.*, the ground rules) by which other conventions would be examined for ratification by the United States. We think that incorporating the ground rules in the letter depositing the instrument of ratification with the ILO accomplishes this purpose, particularly if the Senate endorses the ground rules in a declaration as part of its resolution of ratification giving its advice and consent to ratification of Convention 144. Under these circumstances, the business community feels fully protected from the possibility that changes in domestic law could occur through the ratification of ILO conventions.

Question 3. Are you also concerned about the possibility in the conventions which we may be considering in the future of having U.S. domestic law replaced by treaty law? I presume that the U.S. business community would not be too enthusiastic about having labor standards and regulations imposed by treaty.

As indicated in my answer to the previous question and in my testimony to the Foreign Relations Committee, the business community is extremely concerned about the possibility that U.S. labor law could be superseded by the ratification of ILO conventions. The United States currently examines unratified conventions through the Tripartite Advisory Panel on International Labor Standards (TAPILS), a subgroup of legal representatives of the President's Committee on the ILO. The purpose of TAPILS is to determine whether any ILO conventions can be ratified without amending U.S. labor law and practice. Between 1980 and 1983, preliminary consideration by TAPILS of the legal impact on domestic labor law of a number of ILO conventions concerning collective bargaining, equal treatment and forced labor identified a number of possible differences between various provisions of those conventions and the requirements of U.S. labor law. To date, the only conventions that TAPILS has concluded could be ratified without amending U.S. law and practice are Conventions 144 and 147.

Moreover, the first exhaustive and in-depth study of the legal consequences of ratification of any ILO conventions was completed with respect to two "cornerstone" conventions on freedom of association, the right to organize and collective--Conventions 87 and 98. That study identifies 20 significant changes in U.S. labor law that would result at either the federal or state levels in the public or private sectors if these two conventions were ratified by the United States. See Potter, Freedom of Association, the Right to Organization and Collective Bargaining--The Impact on U.S. Law and Practice of ratification of ILO Conventions No. 87 & No. 98.

Because of these differences between existing U.S. labor law and ILO conventions, the business community pressed for and negotiated ground rules with the AFL-CIO and the concerned government agencies concerning the review of ILO conventions. These ground rules govern the implementation of Convention 144. They assure that the examination process provided for in Convention 144 will not result amendment of U.S. labor law by treaty rather than by federal and state legislation through the normal legislative process, which at the the federal level involves both Houses of Congress. Consequently, the business community believes that the ground rules fully protect it from the possibility that domestic law could be amended as the result of ratification of ILO conventions.

Question 4. What is the feeling of the U.S. business community about having the United States pay one-fourth of the ILO's budget when there are 121 member states? I don't think this a particular way of dealing with the national debt. I think business would also be concerned.

The question of the 25 percent contribution of the United States to the ILO is one that affects all United Nations agencies. The relationship between this contribution -- $37 to $40 million annually -- has little to with the national debt of the United States.

The business community has not taken a position on the size of the annual U.S. contribution to the ILO. The contributions of all countries, however, are subject to negotiation by all of the countries in the U.N. system. The business community believes in meeting its legal obligations and the sanctity of contracts. Even though the U.S. voting power is small in the ILO, through the operation of the tripartite structure of the ILO Governing Body, the United States has considerable influence on the size and direction of the ILO budget, unlike in other U.N. agencies.

Since 1986, the United States has been increasingly in arrears in its contributions to the ILO. These arrearages have undermined and will continue to undermine U.S. effectiveness in the ILO at a time when the United States is seeking to improve its effectiveness through the ratification of ILO conventions. If the arrearages continue, under the ILO Constitution the United States will eventually lose its vote in the ILO when arrearages total two years' contributions.

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United States Senate
COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, DC 20510-6300

December 15, 1987

The Honorable Daniel Patrick Moynihan
United States Senate
Washington, D.C. 20510

Dear Pat:

During my testimony at the hearing of the Committee on Foreign Relations on ratification of Conventions 144 and 147 of the International Labor Organization (ILO), we discussed the constitutional problems which may arise if the Senate ratifies an ILO convention which differs from existing federal and state labor laws. As you know, under Article VI of the Constitution, treaties ratified later in time supersede previously enacted federal and state statutes containing different legal requirements. As a result, Senate ratification of an ILO convention at odds with an existing federal or state statute would overturn that law, dramatically changing the legislative process established by the Constitution. At the same time, I believe that I share with you the sentiment that we, as a nation, must take a more active role in considering and ratifying ILO conventions. Thus, the problem before us is whether ILO conventions can be ratified in a manner which does not jeopardize our bicameral legislative process.

During your hearing, I mentioned that one possible solution to this problem would be to ratify an ILO convention and then immediately reenact domestic labor law. Such a procedure, while admittedly somewhat cumbersome, would avoid the possibility of an ILO convention inadvertently amending federal law.

Another solution, which is apparently the course of action the Committee will adopt, is to recognize formally the ground rules regarding the legal examination of ILO conventions agreed to by the President's Committee on the ILO. These rules, which were agreed to with respect to the legal examination of unratified conventions provided for in Article 5 (1)(c) of Convention 144, set forth the following requirements:

1. each ILO convention will be examined on its merits on a tripartite basis;

2. if there are differences between the convention and federal law and practice, these will be dealt with in the normal legislative process; and

3. there is no intention to change state law and practice by federal action through ratification of ILO conventions, and the examination will include possible conflicts between federal and state law that would be caused by such ratification.

The Senate should make sure that the resolution of ratification is accompanied by a declaration that these rules would govern consideration of each ILO convention by both the President's Committee on the ILO and the Senate. Such a step would ensure that our country's labor laws are not being written by an international body.

Thirty five years after the United States ratified its last ILO convention, ratification of Conventions 144 and 147 will demonstrate our renewed commitment to the ILO and should improve our effectiveness in that forum. Much more needs to be done, however. To date, this country has only ratified seven conventions, one of the lowest ratification records in the ILO. This record is especially deplorable given the fact that other ILO conventions can be ratified without posing any legitimate threat or danger to existing federal or state statutes.

For example, there are three maritime conventions which can and should be ratified immediately. On July 4, 1952, the Senate gave advice and consent to ratify Convention 68 (concerning food and catering by ships' crews), Convention 69 (concerning certification of ships' cooks), and Convention 73 (concerning medical examination of seafarers). These conventions have not been ratified because implementing legislation was never enacted. The House and Senate should take immediate steps to enact such legislation.

Following oversight hearings that I held on the ILO in 1985, I wrote to then Secretary of Labor William Brock and suggested that the Tripartite Advisory Panel on International Labor Standards (TAPILS) -- the legal representatives of the President's Committee -- examine both ILO human rights conventions and technical conventions on a two-track approach. To date, TAPILS has made some progress on Convention 105 concerning forced labor and has just begun examination of Convention 111 on equal treatment.

No steps have been taken, however, to examine ILO technical conventions which possibly could be ratified without amending U.S. law. These might include:

Convention 95 concerning protection of wages
Convention 109 concerning wages, hours of work and manning
Convention 128 concerning old age and survivors benefits
Convention 131 concerning minimum wage fixing
Convention 133 concerning accommodation of crews
Convention 134 concerning prevention of accidents at sea
Convention 146 concerning seafarers annual leave
Convention 150 concerning labor administration
Convention 157 concerning social security rights
Convention 160 concerning labor statistics

Ratification of these conventions, along with the ILO's human rights conventions, would clearly raise the standing and effectiveness of the United States in this important world organization. As you know, while the ILO is not given much attention in this country, it plays a much larger role in the affairs of other member countries. It is time we recognize that the ILO is a valuable forum for the United States and it is in the foreign policy interests of the United States to ratify ILO conventions.

Again, thank you for all you have done to push the Senate toward ratfication of these two treaties. Your interest and dedication are one of the key reasons that we are so close to Senate consideration.

Sincerely,

Orrin G. Hatch
Ranking Minority Member

OGH:kmg